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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States

OCTOBER TERM 1975

—
No. 75-104
—

UNITED JEWISH ORGANIZATIONS OF WILLIAMSBURGH, INC.,
et al., *Petitioners*,

v.

HUGH L. CAREY, et al.,
Respondents.

—
ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
—

PETITION FOR WRIT OF CERTIORARI FILED JULY 17, 1975

CERTIORARI GRANTED NOVEMBER 11, 1975

Supreme Court of the United States

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ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
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Docket Entries

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Case No. 74-2037

UNITED JEWISH ORGANIZATION OF WILLIAMSBURGH

v.

MALCOLM WILSON

Date—Filings—Proceedings—Filed

• • • • •

8-23-74—Denial of preliminary injunction affirmed; opinion
and final determination of the appeal to follow, Per
Curiam

• • • • •

Docket Entries

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Date—Filings—Proceedings—Amount Reported in
Emolument Returns

6-11-74—Complaint filed. Summons issued.—1 JS5

6-12-74—Notice of motion for a Temporary Restraining
Order ret 61774 at 10 A.M. filed.—2

• • • • •

6-20-74—By BRUCHHAUSEN, J.—Memorandum and order dtd
6-20-74 denying motion for three judge court filed.
(p/c mailed to plttf.).—4

6-21-74—Stenographer's transcript of June 17, 1974 filed.

6-25-74—Notice of motion to dismiss complaint ret 7-5-74
at 10 A.M. filed.—6

6-26-74—Motion and memorandum of law in support of
motion for summary judgment in favor of plttf filed.
—7/8

• • • • •

6-26-74—Stenographer's transcript dtd 6-20-74 filed.—11

• • • • •

7-3-74—Answer of deft filed.—14

• • • • •

7-12-74—Notice of appeal filed. Duplicate mailed to C of A
& deft. jn.—17

• • • • •

7-26-74—By BRUCHHAUSEN, J.—Order dated July 25, 1974
filed that plttf motions for a preliminary injunction
and summary judgment be denied. The defts motions
to dismiss the complaint are granted. Copies sent to
the attys.—20 JS6

• • • • •

7-30-74—Notice of appeal filed. JN Copy mailed to C of A.
—21

• • • • •

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

No. 740-877

UNITED JEWISH ORGANIZATIONS OF WILLIAMSBURGH, INC.

82 Lee Avenue
Brooklyn, N.Y.

ALBERT FRIEDMAN
71 Lee Avenue
Brooklyn, N.Y.

HELEN GREENWALD
131 Heyward Street
Brooklyn, N.Y.

LEOPOLD LEFKOWITZ
85 Taylor Street
Brooklyn, N.Y.

ALEXANDER W. NOJOVITS
154 Wilson Street
Brooklyn, N.Y.

HENRIETTE FRIEDMAN
71 Lee Avenue
Brooklyn, N.Y.

HAROLD KLAGSBALD
172 Rutledge Street
Brooklyn, N.Y.

DAVID LINDNER
198 Wilson Street
Brooklyn, N.Y.

JULIUS TEMPLER
104 Heyward Street
Brooklyn, N.Y.
* *Plaintiffs,*

v.

MALCOLM WILSON
Governor of the State of New York
State Capitol
Albany, N.Y.

JOHN GHEZZI
Secretary of State of New York
State Capitol
Albany, N.Y.

WARREN ANDERSON
Temporary President of the New York Senate
State Capitol
Albany, N.Y.

PERRY DURYEA, JR.
Speaker of the New York Assembly
State Capitol
Albany, N.Y.

NEW YORK CITY BOARD OF ELECTIONS
80 Varick Street
New York, N.Y.

ATTORNEY GENERAL OF THE UNITED STATES
Department of Justice
Washington, D.C. 20530

Serve: David G. Trager
United States Attorney
for the Eastern District of New York
U.S. Courthouse
Brooklyn, N.Y.

Defendants.

Complaint for Declaratory Judgment and Injunction

Jurisdiction

1. This is an action to enjoin the enforcement and application of laws of the State of New York, adopted on May 29, 1974, which deprive the plaintiffs and other similarly situated voters who are residents of the Williamsburgh section of Brooklyn, New York, of rights, privileges and immunities secured by the Constitution and by the laws of the United States, including the nondiscriminatory right to vote, as hereinafter more fully appears. Plaintiffs also seek a judgment declaring that the State laws at issue, specifically Chapters 588, 589, 590, 591 and 599 of the New York Laws of 1974, deny them the equal protection of the laws and deprive them of liberty without due process of law in violation of the Fourteenth and Fifth Amendments to the United States Constitution and are, consequently, invalid.

2. This Court has jurisdiction of this action pursuant to Sections 1331, 1343 and 1357 of Title 28, United States Code. The right to vote of each of the plaintiffs and of those associated with the plaintiff organization exceeds, in value, the amount of Ten Thousand Dollars.

Parties

3. United Jewish Organizations of Williamsburgh, Inc., is a nonprofit community organization which includes, as constituent members, approximately one hundred Jewish community groups and organizations in the area of Williamsburgh, Brooklyn. It has, as an "umbrella" community organization, led efforts in recent years to encourage registration and voting, as well as political awareness, among the Jewish residents of the Williamsburgh section of Brooklyn.

4. Each of the individual plaintiffs is a citizen of the United States and a voter registered at the address shown in the caption of this complaint. Each of the plaintiffs is also an adherent of the Orthodox Jewish faith and a member of the Hasidic community located in Williamsburgh. As hereinafter more fully appears, the right of each plaintiff to cast an effective vote for the New York State Senate and Assembly, as well as for the United States Congress, has been unconstitutionally infringed by the challenged actions of the New York Legislature and the United States Department of Justice. The defendants are sued in their capacities as public officials responsible for the enactment and application of the laws of New York and the United States.

The Claim

5. This action concerns the effect of Chapters 588, 589, 590, 591 and 599 of the 1974 New York Laws on the voters who reside in the section of Brooklyn bordered by the East River, South 6th Street and Broadway, Walton Street, and

Wallabout Street. This area is marked in red on the map attached hereto as Exhibit I.

6. The area described in paragraph 5 takes in substantially all of Census Tract Numbers 509, 525, 529, 531, 533, 535, 537, 539, 545, 547, 549, as shown on Exhibit I. According to the 1970 United States Census figures, the total population of these tracts was 37,299, of which 33,260 persons were white, 3,327 were black, and 712 were classified as "other."

7. The white residents of this area are overwhelmingly adherents of the Orthodox Jewish faith and form a closely knit community of *Hasidim*, which found this refuge in the United States during and after the holocaust of the Second World War. For more than 25 years this *Hasidic* community, led in all spiritual matters by its rabbi and, in other community activities, by selected members, has lived in the Williamsburgh section and developed a substantially self-sustaining and totally law-abiding community in that area. Because of distinctive religious practices, which result in modes of dress and appearance that immediately identify those who are members of the community, the *Hasidic* Jews who are residents of this area have encountered substantial discrimination and hostility from some segments of society. They have, as a result, turned increasingly in recent years to their elected officials to secure protection of their rights to live peacefully and free of illegal discrimination.

8. During all the time that the *Hasidic* community has resided in the Williamsburgh area, the area described in paragraph 5, which has formed the boundary of its community, was always recognized as a single community for electoral purposes. At all times during the past 25 years, the entire area was included within one State Senate District and one State Assembly District.

9. The inclusion of the area described in paragraph 5 within one Senate District and one Assembly District en-

couraged the plaintiffs and those similarly situated to register, to vote and to participate in the democratic process in order to secure the rights growing out of that process. The legislators elected from the said districts were, in the view of the plaintiffs, responsive to their needs since the *Hasidic community* constituted a large and effective voting bloc in those districts.

10. The unity of the area described in paragraph 5 hereof was recognized by the Judicial Commission established by the New York Court of Appeals in March 1966. The relevant State Senate and Assembly Districts fixed by that Commission and implemented under orders of the New York Court of Appeals between 1966 and 1972 are shown on Exhibits II and III attached to this complaint. The area affected was included, in its entirety, in State Senate District No. 14 and in Assembly District No. 57.

11. Acting under instructions from the New York Legislature, the Joint Legislative Committee on Reapportionment issued a report on December 14, 1971, recommending revisions of electoral lines in the State Legislature. Its recommendations, which were adopted by the legislature in 1972 as Chapters 76, 77 and 78 of the 1972 Laws, recognized the unity of the area described in paragraph 5 hereof. Under the 1972 reapportionment, the area was assigned to the 57th State Assembly District and to the 17th State Senatorial District. Exhibits IV and V attached to this complaint show the relevant districts.

12. On April 1, 1974, the defendant ATTORNEY GENERAL OF THE UNITED STATES, acting through and by the Hon. J. Stanley Pottinger, Assistant Attorney General, issued a letter stating his view that the apportionment lines established by Chapters 76, 77 and 78 of New York's 1972 Laws was invalid under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. A copy of the letter is attached to this complaint as Exhibit VI. The defendant's

letter stated that the 1972 apportionment was invalid in Kings County, in part, because "Senate district 18 appears to have an abnormally high minority concentration while adjoining minority neighborhoods are significantly diffused into surrounding districts" and because "[i]n the less populous proposed assembly districts, the minority population appears to be concentrated into districts 53, 54, 55 and 56, while minority neighborhoods adjoining those districts are diffused into a number of other districts." The legal effect of this letter, under the terms of the Voting Rights Act, was to render the 1972 reapportionment invalid and unenforceable unless and until a three-judge District Court for the District of Columbia would disagree with the ATTORNEY GENERAL's conclusion.

13. The conclusion of the defendant ATTORNEY GENERAL was based *not* on any finding, evidence, or lack of evidence, tending to establish that there was purposeful racial gerrymandering, designed to reduce black representation in the State Legislature, when the 1972 reapportionment and the 1966 reapportionment were drawn up.

14. The conclusion of the defendant ATTORNEY GENERAL rested entirely on the finding by his agents and employees that the *effect* of the 1972 lines was to "abridge the right to vote on account of race or color" in violation of the Voting Rights Act.

15. The conclusion of the defendant ATTORNEY GENERAL did not rest on any finding, evidence, or lack of evidence tending to show that there was a history of past official discrimination against the black electorate of Kings County which could only be corrected by deliberate maximization of black voting strength in elections to be held in 1974.

16. The conclusion of the defendant ATTORNEY GENERAL with regard to Kings County rested entirely on his view that it was possible to draw district lines adjoining Senate District 18 and Assembly Districts 53, 54, 55, 56 which

would create "substantial black majorities" in such other districts.

17. Agents and officials of the New York Legislature and its Joint Committee on Reapportionment were told by agents of the defendant ATTORNEY GENERAL that their obligation under the Voting Rights Act would be met only if they created other Senate and Assembly districts with "substantial black majorities." As the result of meetings with attorneys of the Department of Justice, acting under the direction of the ATTORNEY GENERAL, agents of the New York Legislature concluded that it was their obligation, in view of federal officials, to create more districts that contained at least 65 percent black population.

18. The Joint Committee on Reapportionment and, on information and belief, a majority of the New York Legislature, disagreed with the conclusion of the Attorney General. Because of the "exigencies of time," however, the defendant GOVERNOR OF THE STATE OF NEW YORK, acting through the Office of the Attorney General of the State, determined not to challenge the said conclusion by the procedure authorized under the Voting Rights Act, but instead seek to satisfy the demands of the defendant ATTORNEY GENERAL OF THE UNITED STATES by new legislation.

19. On May 27, 1974, without any advance hearing or formal solicitation of views from the public, the New York Joint Committee on Reapportionment issued a report recommending changes in the 1972 reapportionment lines "to effect compliance with the United States Department of Justice determination of April 1, 1974." A copy of the body of that report and the Appendices thereto setting out "Criteria for Establishing Ethnic Composition" for the Kings County Assembly, Senate and Congressional Districts are attached hereto as Exhibit VII.

20. The actions of the Joint Committee on Reapportionment and its recommendations were guided principally by

racial criteria. The Committee was race-conscious throughout its consideration of how to comply with the ATTORNEY GENERAL's "determination of April 1, 1974."

21. Employees of the Joint Committee met on several occasions with attorneys of the U.S. Department of Justice to discuss how compliance could be obtained. On each occasion, on information and belief, employees of the Department of Justice emphasized the need to arrange lines so that there would be "substantial black majorities" in more Senate and Assembly districts.

22. The opinion communicated to employees of the Joint Committee was, on information and belief, that black majorities of between 55 and 60 percent would be insufficient to secure approval from the defendant ATTORNEY GENERAL, and that it would be necessary to achieve a percentage approximating 65 percent to satisfy the Department of Justice's criteria.

23. The district lines challenged in this case were drawn as a result of the erroneous and unconstitutional demands and standards imposed by agents of the defendant ATTORNEY GENERAL OF THE UNITED STATES and pursuant to the racial criteria established by the Joint Committee at the insistence of the United States Department of Justice.

24. Exclusively because of these improper and unconstitutional demands, the New York Legislature, on the recommendation of the Joint Committee, divided the community described in paragraph 5 between two Senate and Assembly Districts. The boundary between the 57th and 58th Assembly Districts, pursuant to Chapter 588 of the 1974 New York Laws, is, in part, Marcy Avenue, the Brooklyn-Queens Expressway, Bedford Avenue, Heyward Street, and Wythe Avenue. The boundary between the 25th and 23rd Senate Districts, pursuant to Chapters 588, 591, 599 of the 1974 New York Laws, is the Brooklyn-Queens Expressway. The

relevant Senate and Assembly Districts are shown in Exhibits VIII and IX attached to this complaint.

25. The result of this proposed redistricting is unjustifiably to divide in half, for electoral purposes, the community represented by the first plaintiff in this case. Individual plaintiffs A. FRIEDMAN, H. FRIEDMAN, LEFKOWITZ, LINDER and NOJOVITS would, under this apportionment, be represented in the 57th Assembly District and the 25th Senatorial District; plaintiffs GREENWALD, KLAGSBALD and TEMPLER would be represented in the 56th Assembly District and the 23rd Senatorial District.

26. Application and enforcement of the challenged laws would dilute the value of each plaintiff's franchise by halving its effectiveness. This result, having been secured not by any legitimate legislative process, but entirely to carry out a minimum racial quota in the electoral districts where the plaintiffs reside, violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment.

27. Other than the constitutionally impermissible race-conscious purpose described above, there is no rational policy that justifies the segmentation of the Williamsburgh *Hasidic* community as accomplished by the 1974 reapportionment. That action is, therefore, arbitrary and irrational, and violates the plaintiff's right, secured by the Due Process Clause of the Fourteenth Amendment, to be free of totally arbitrary governmental actions.

28. The plaintiffs have, by reason of the actions described above, been assigned to Assembly, Senate and Congressional Districts solely on the basis of their race. This assignment, which results in the dilution of their voting power, abridges their Fifteenth Amendment right to be free of racial discrimination in voting and their similar right under Section 1 of the Voting Rights Act, 42 U.S.C. § 1973, not to have their right to vote abridged or denied "on account of race or color."

29. Pursuant to Section 5 of the Voting Rights Act, the legislation challenged in this action is invalid unless and until "the Attorney General [of the United States] has not interposed an objection [thereto] within sixty days after . . . submission" of the legislation to the Attorney General. Chapters 588, 589, 590 and 591 of New York 1974 Laws were submitted to the defendant ATTORNEY GENERAL on May 31, 1974, with a request that they be given expedited consideration.

30. The full statutory 60-day period was required for consideration by the defendant ATTORNEY GENERAL of the validity of the 1972 reapportionment. As a result of the substantial delay caused by this extended consideration, the authorities of New York State were unable to assert a timely judicial challenge to the determination issued on April 1, 1974. It has now been represented to the defendant ATTORNEY GENERAL, in the letter of submission pursuant to the Voting Rights Act, that expedited consideration is necessary because "the first date for the circulation of designating petitions for this year's primary in New York State will be June 17."

31. Unless this Court issues and injunctive order, the defendant GOVERNOR OF THE STATE OF NEW YORK and his agents, will administer and implement the challenged statutes, even pending a final decision by the defendant ATTORNEY GENERAL on their validity under the Voting Rights Act. Plaintiffs will, consequently, suffer irreparable harm by being prevented from participating in the electoral process in districts to which they should constitutionally have been assigned.

RELIEF

WHEREFORE, plaintiffs pray:

1. That this Court grant a temporary and permanent injunction against the administration and implementation by the defendant GOVERNOR OF THE STATE OF NEW YORK and his

agents of Chapters 588, 589, 590, 591 and 599 of the 1974 New York Laws;

2. That this Court issue a judgment against the ATTORNEY GENERAL OF THE UNITED STATES declaring that the standard under the 1972 New York Laws was unconstitutional and improper;

3. That this Court issue an order declaring that Chapters 588, 589, 590, 591 and 599 of the 1974 New York Laws, enacted on May 29, 1974, are unconstitutional and enjoining the operation of the said laws on the ground of their unconstitutionality;

4. That This Court issue an order enjoining implementation and administration of any apportionment of State Senatorial, State Assembly, and U.S. Congressional Districts in Kings County other than the districts created by Chapters 11, 76, 77 and 78 of 1972 New York Laws or, *alternatively*, those established for the State Legislature by the Judicial Commission appointed by the New York Court of Appeals, and for Congressional Districts by the reapportionment legislation implemented for November 1970;

5. That this Court grant to the plaintiffs their costs and attorneys' fees of this action; and

6. That this Court grant such other and further relief as may be proper in the circumstances.

NATHAN LEWIN

MILLER, CASSIDY, LARROCA & LEWIN

• • • • •

DENNIS RAPPS

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Attorneys for Plaintiffs

Exhibit VI

ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

Apr. 1, 1974

Mr. George D. Zuckerman
Assistant Attorney General
In Charge of Civil Rights Bureau
State of New York
Two World Trade Center
New York, New York 10047

Dear Mr. Zuckerman:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of Chapters 11, 76, 77, and 78, New York Laws of 1972, insofar as they relate to the Congressional, Senate and Assembly District Lines in Bronx, New York and Kings Counties. The submission was received by this Department on January 31, 1974.

We have given careful consideration to the submitted changes and the supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties. Except as noted below, the Attorney General does not object to the implementation of the submitted redistricting legislation. However, on the basis of all the available demographic facts and comments received on these submissions as well as the state's legal burden of proving that the effect of abridging the right to vote because of race or color, we have concluded that the proscribed effect may exist in parts of the plans in Kings and New York Counties.

First, with respect to the Kings County congressional redistricting the lines defining district 12 and surrounding

districts appear to have the effect of overly concentrating black neighborhoods into district 12, while simultaneously fragmenting adjoining black and Puerto Rican concentrations into the surrounding majority white districts. We have not been presented with any compelling justification for such configuration and our own analysis reveals none. More over, it appears that other rational and compact alternative districting could achieve population equality without such an effect.

Similarly, in the Kings County senate and assembly plans, a parallel problem exists. Senate district 18 appears to have an abnormally high minority concentration while adjoining minority neighborhoods are significantly diffused into surrounding districts. In the less populous proposed assembly districts, the minority population appears to be concentrated into districts 53, 54, 55 and 56, while minority neighborhoods adjoining those districts are diffused into a number of other districts. As with the congressional plan we know of no necessity for such configuration and believe other rational alternatives exist.

In the New York County senate plan, the lines defining district 28 in West Harlem appear to reduce significantly the minority voting strength in that area. Significant portions of minority neighborhoods in that area (district 27 under the prior plan) have been removed to proposed district 29 with apparent dilutive effect. We have been presented with no persuasive justification for this effect and reasonable alternatives appear to be available.

Finally, in the New York County assembly districting, the lines describing districts 70, 71, 72 and 74 appear to have the effect of unnecessarily diluting the voting strength of black and Puerto Rican residents. The result is that district 71 is an oddly shaped district over four miles long with a minority population of approximately 46 per cent.

On the basis of our findings, therefore, we cannot conclude, as we must under the Voting Rights Act, that those portions of these redistricting plans will not have the effect of abridging the right to vote on account of race or color. For that reason I must, on behalf of the Attorney General, interpose an objection to the implementation of the enumerated portions of the submitted plans.

We have reached this conclusion reluctantly because we fully understand the complexities facing the state in designing reapportionment plans to satisfy the needs of the state and its citizens and simultaneously, to comply with the mandate of the federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that Court, however, the legal effect of the objection of the Attorney General is to render unenforceable the specified portions of the redistricting plans.

Sincerely,

/s/ J. STANLEY POTTINGER
J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74C 877

[Caption omitted]

Notice of Motion for Temporary Restraining Order

SIRS:

PLEASE TAKE NOTICE, on the annexed affidavit of Nathan Lewin, Esq., and the complaint filed herein, the undersigned will move this Court, on June 17, 1974, at 10:00 a.m., or as soon thereafter as counsel can be heard for an Order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, temporarily restraining the implementation of Chapters 588, 589, 590, 591, and 599 of the New York Laws of 1974, pending a hearing on a preliminary injunction before a Three-Judge District impaneled pursuant to 28 U.S.C. § 2281 and for the impanelment of such a Court pursuant to 28 U.S.C. § 2284.

MILLER, CASSIDY, LARROCA & LEWIN

DENNIS RAPPS

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

June 17, 1974

74-C-877

[Caption omitted]

Transcript of Proceedings

[3] THE CLERK: United Jewish Organizations of Williamsburgh vs. Malcolm Wilson, et al.

MR. LEWIN: Your Honor, Mr. Fuchsberg who represents Counselor Wright asked me since he had to go across on an urgent matter, across the street, he asked me to ask if your Honor would please note his appearance on behalf of Counselor Wright, also that he is to appear as *amicus curiae*.

Now, your Honor, I think before——

MR. BONINA: My name is John Anthony Bonina, 16 Court St., Brooklyn. I am appearing for the Kings County Republican County Committee.

MR. LEWIN: My name is Nathan Lewin of 1320 19th St., Northwest, Washington, D.C.

MR. SNAPPER: Your Honor, if it please the Court, if your Honor is not going to transfer this matter back to Judge Stewart's court, if it is going to stay here, then I think we, on behalf of the National Association for the Advancement of Colored People, would intervene on the side of the defendants so that it will be possible for us to protect the interests we are seeking to vindicate in Judge Stewart's court, and we will file appropriate papers in the next day.

[4] THE COURT: Does anyone want to make any statement on that point?

MR. HERZOG: Your Honor, might I note my appearance?

THE COURT: We have enough lawyers in it now. Maybe one more won't do any harm.

MR. HERZOG: I represent Adrian Burke, Corporation Counsel of the City of New York. My name is Irwin Herzog.

MR. ZUCKERMAN: I am George Zuckerman, representing the Attorney General for the State of New York.

MR. SNAPPER: My name is Snapper. I represent the National Association for the Advancement of Colored People.

MR. GIAIMO: I represent the residents of Kings County and am appearing *Amicus Curiae*.

MR. KRAMER: Douglas Kramer, appearing for the United States Attorney General.

MR. LEWIN: I believe this morning, your Honor, before we recessed, you had urged counsel to get together to see whether we could agree on a temporary restraining order that would freeze the status quo at least until such a time as either yourself or a three-judge court, if you decided to seek to impanel [5] one, could consider this proceeding further.

I am sorry to report that we could not agree on the terms of such an order.

The one I had drafted and which I believe was filed with the Clerk and served on the other parties, and I believe also on Mr. Snapper prior to today was an order which would have prevented the Board of Elections from taking any steps such as printing or distributing maps or lines, and would have required notification to everybody that any reapportionment lines were under judicial challenge.

Your Honor, the objection that was made to that order I believe when we recessed and tried to talk was that it might unfairly discriminate against some people who had already obtained copies of maps or lines and would unduly discriminate in their favor against those who had not obtained maps and lines and would not now be able to obtain them.

Instead of that I think we also discussed the proposal of simply freezing everything until this coming Friday because your Honor said we would meet again Thursday morning and therefore we could simply defer until Friday any action on the petitions.

This could be done simply by advancing to June 21, 1974, that is by four days from the present [6] the statute, which says that June 17, 1974 is the first date for valid signatures under petitions and we could simply advance it to June 21, 1974 as the first date for validly signing petitions.

Your Honor, this would be a very short order, it would simply say:

"The first date for signing designating petitions pursuant to the New York Election Law Section 149(2) is advanced, for all election districts located in whole or in part in Kings County, to June 21, 1974."

Now, as I understand, and I think they certainly will speak for themselves, but counsel for the City and the State I believe expressed to me the view that if an order had to be entered during something more than simply saying, Everybody act on his own risk, then that might be a fair order to order, but their view was that they would have to oppose any order being entered beyond one that simply said, "Everybody acts at his own risk."

Of course, it is our position that an order that said, "Everybody acts at his own risk," is a meaningless order.

I would suggest this is the simplest thing to do, that is for these four days, since the signatures [7] on the designating petitions are not valid.

Your Honor, we recognize that it is now 12:30 on the first day on which any such petition could be signed, but we think the word would get out pretty quickly that everything has been frozen until Friday, and that the people who have been working this morning getting petitions will simply, if the Court permits them to go ahead on Friday, simply go ahead and get the petitions on Friday.

THE COURT: We have been unduly lengthy on this whole matter and I would agree on that, June 23rd—

MR. HERZOG: Your Honor, before you rule, the purpose of the temporary restraining order is to protect the status quo, not to change it.

Now counsel here, all of counsel here, with the exception of perhaps Mr. Zuckerman and myself, represent special interests, they may be divergent interests but they are special interests.

I think Mr. Zuckerman and myself represent the rank and file voters in this state and probably all candidates, in this case at least in Kings County which we are speaking about now, and we do not have any particular partisan attitude.

Your Honor, these fellows may agree and maybe it is in their best interest to put this off, but [8] there are thousands of people on the streets today, your Honor, getting signatures, and thousands of voters are signing petitions, and the status quo is that petitions are being circulated.

Now it may very well be that these petitions may not be valid and the lines may not be valid; it also may very well be that these petitions are going to be valid and the lines are going to be valid.

Now, if they are valid, then there is nothing lost, they will be counted, they will be good signatures, and they will be utilized for the designation and nomination of candidates.

If it is invalid and if on the merits of this case the Court says that these are not valid, the lines, what harm would there be to the people and to the candidates, all of the candidates, not particular candidates, to go out and have to solicit new petitions on new lines? Everyone would be equal, they would all have the same opportunity, they would all have the same disadvantages.

What we are doing here is taking a certain group of candidates and giving them this right to say, Wait awhile, we will take a couple of other days, let our adversaries knock themselves out, let them get their petitions, maybe they won't be any good.

[9] Now, I don't want to put anybody in that position, your Honor. I believe everybody should be equal.

MR. BONINA: Your Honor, what the Corporation Counsel is suggesting is that candidates go out with petitions asking people to sign them with the knowledge that they may be bringing on proceedings here to re-draw the lines because they are unconstitutional, and that is inconsistent, that is to ask candidates to go to people to sign something that they themselves don't believe in, and I say that inasmuch as now they are not illegal and not inconsistent.

Your Honor, I represent the Republican Party and quite contrary to the last counsel who had indicated that it is a question of the candidates going out and obtaining signa-

tures that they obtained may be invalid, I am speaking for the Republican Party who last evening to hundreds upon hundreds of workers throughout this county election kits were given out whereby they could go out and get signatures this morning. The Republican Party in this county, and we do not have sufficient workers to cover every Assembly District, but there were a couple of [10] hundred Republicans and these people were out this morning ringing doorbells and getting signatures without any knowledge at all as to what is happening here. As a matter of fact, your Honor, I had no knowledge of this proceeding at all until I received information before Mr. Justice Dadiman, Kings County Supreme Court, to come over here immediately—

THE COURT: You are against the TRO?

MR. BONINA: Yes, your Honor.

The effect of signing that type of a restraining order is to disenfranchise the voters from nominating their candidates at this moment.

In other words, signatures have already been, I would be absolutely certain, that signatures, thousands upon thousands of signature have been collected of enrolled Republicans as well as Democrats and that they have already been put upon designating petitions this morning, and to say to them, while this is going on, Well, the signatures are invalid is to in effect disenfranchise those voters who have already placed their signatures upon designating petitions designating candidates of their choice, and that whether it is for or against what we stand for and believe in, and it is no difference to me whatever it is, whether it is right or wrong, our special [11] interest is that these people have the right to have their candidates.

THE COURT: Very well.

Once, once in awhile I reverse myself. I think I have heard enough pro and con. I will not enter the TRO.

MR. BONINA: Thank you, your Honor.

MR. GIAIMO: Your Honor—

THE COURT: I have heard enough.

MR. LEWIN: Your Honor—

THE COURT: I know that people are dissatisfied about rulings, but that is my ruling.

MR. LEWIN: Might I, your Honor?

Your Honor, just one moment, please, because I think there has been just a mistake in an assertion as to what the consequences of this is.

As I tried to point out to your Honor, the law at the present time is not valid. The law is not on the books of New York States.

My colleague here has said we are disfranchised from going out and signing petitions. That is not true. What we are saying is and what is entirely clear is that this law, until the Attorney General acts upon it, is totally invalid—

THE COURT: I am going to go into the issues [12] later. We will have that to consider, but I have heard enough now, counselor. I have your point.

MR. GIAIMO: Your Honor, may I say this? May we advance this to 10:00 o'clock on Thursday?

THE COURT: I again request counsel to submit their memoranda on this item of a three-judge court by noon tomorrow.

MR. GIAIMO: Can we advance the date of the hearing then? Can we move it up to Wednesday?

THE COURT: I will reserve decision on that.

MR. LEWIN: Your Honor, your Honor—

(Judge Bruchhausen then left the bench.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

74 C 877

[Caption omitted]

Transcript of Proceedings

United States Courthouse
Brooklyn, New York

June 20, 1974

BEFORE:

HONORABLE WALTER BRUCHHAUSEN, U.S.D.J.

* * * * *

[3] THE CLERK: United Jewish Organizations of Williamsburg, et al, versus Malcolm Wilson and others.

THE COURT: I regret the delay. I try to avoid the old adage of "hurry up and wait." But we do have emergency problems in chambers. Sometimes the public does not think that the Court is operating when there is no one in the courtroom. But as the lawyers understand, a great deal is consummated in chambers.

Oh, I may say at this point that so much of the plaintiffs' motion as seeks the impanelment of the three-judge court is denied. And a memorandum and order will be filed.

So you may proceed, gentlemen.

MR. SCHNAPPER: Your Honor, before we get to the merits of the controversy, we have a pending motion to intervene on behalf of the NAACP of New York City.

The District lines, which are being challenged here, are district lines which we succeeded in forcing the legislature to enact this year, as the result of seven years of litigation. And this particular action is essentially an attack on the [4] outcome of litigation in which we have been engaged

in for several years. To protect the judgments which we have already obtained and relief which we have won, not only from the courts, but the attorney general and the legislature, we would ask for permission to be permitted to intervene as party defendants in this action. We raised that matter before. I think the parties indicated that they had no opposition to that.

THE COURT: Well, I have been through these situations a great many times. I think you may come in as amicus curiae. I think that will protect your interests. You will be allowed to submit whatever you think appropriate.

MR. SCHNAPPER: Would your Honor's order in that regard include the possibility of examining? I think there would be one witness today.

THE COURT: You say what?

MR. SCHNAPPER: I think there will be one witness today. We would like the Court's leave to examine that witness so that appears to be appropriate at that time.

THE COURT: Well, I will acquiesce in that.

MR. SCHNAPPER: All right; that will be [5] perfectly fine.

MR. LEWIN: Your Honor, may I say in that regard, too, that in the hearing, we held on Monday, there were other attorneys who appeared and that at that point requested leave to intervene, I believe.

There has been a Mr. Giaimo, who asked leave to intervene on behalf of the Polish and Italian communities. I do not see him here today.

But if the proceeding were in any way to continue beyond today or at some future hearing, I trust that whatever rule your Honor applies to the amicus curiae, who are appearing in support of the defendants who also apply to the amicus curiae or amici on behalf of the plaintiffs.

THE COURT: Yes, I so rule.

MR. LEWIN: Thank you, your Honor.

Well, then, just for the purposes of the record, if I might, on behalf of the plaintiffs I would note an exception to your Honor's refusal to impanel a three-judge district court.

If I might also state for the record, that we were in some slight uncertainty, but because of the time factors and otherwise, as to exactly how to proceed today. However, in the light of your [6] Honor's ruling, that you would not impanel the three-judge court, we would now like to proceed to seek a preliminary injunction and move for a preliminary injunction directed not to the same matter that we had raised on Monday, which is the matter of circulation of petitions or distribution of petitions, but directed instead to the question of whether relief should be granted with regard to the 1974 reapportionment lines in time to affect the coming primary and election in November of this year.

And in that regard, I think it is our burden as plaintiffs to establish, one, the likelihood of succeeding on the merits and, two, the irreparability of harm if relief were not granted.

And for that purpose, I think it would be appropriate for us just to call a few witnesses to be heard today on that subject, because we think it would be proper for this court to enter a preliminary injunction that would enjoin the use of these 1974 lines, at least insofar as it affects this group of plaintiffs, in time for the 1974 primary and election.

The broader constitutional issues, of course, are of great magnitude. And we are prepared [7] to argue them for that purpose today. But if the Court determines that it should proceed ultimately to a trial on the merits, then of course the question would be, what happens in the meantime. And so far as what happens in the meantime goes, it is our view that for this year, 1974 reapportionment is invalid and may not be applied, both because it is invalid under the Voting Rights Act, and it is unconstitutional, and if it were applied as to these plaintiffs, it would cause them peculiar irreparable harm.

And on that basis, your Honor, we have just a very short paper that we can file, which is a motion for preliminary injunction—

THE COURT: Well, you have already in your original motion added an application for a preliminary injunction. That is in the motion papers.

MR. LEWIN: All right. If it is unnecessary to file it—

THE COURT: The statement and your notice of motion is and for the—no—well, pending hearing on the preliminary injunction—well, I assumed that that was included in this application.

MR. LEWIN: Well, just for formal purposes, your Honor, it is a page and a half, and we simply [8] say we move for preliminary injunction. If I could just file that—I do not think it says anything more than what I have said orally. But having filed that, I would like to call witnesses in support of that motion.

THE COURT: You may so proceed.

MR. LEWIN: I call Rabbi Albert Friedman.

THE CLERK: Will you face the Court and raise your right hand?

MR. LEWIN: I think he will affirm.

THE COURT: You do solemnly swear to tell the truth—

MR. LEWIN: I believe he will affirm.

THE COURT: Oh, he will affirm.

MR. LEWIN: Your Honor, could we have Mr. Fred Richmond instead, at this point? I think he would like to go back, anyway.

[9]

Frederick W. Richmond

called as a witness, having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. LEWIN:

Q. Mr. Richmond, can you please state your occupation?

[10]

DIRECT EXAMINATION

BY MR. LEWIN (continued)

Q. Mr. Richmond, can you please state your occupation?

A. I am City Councilman of the 29th councilmanic district in Brooklyn.

Q. That district that you are a councilman from, does it encompass the district that is involved in the present litigation? A. Yes, sir.

Q. That is the area is Williamsburg where the Hasidic community resides? A. Yes, sir.

Q. How long have you represented that district? A. Two years.

Q. Prior to that time, were you familiar with the residents of that district? A. Yes.

Q. In, specifically, have you been familiar for a period of time with the Hasidic community of Williamsburg? A. Yes, I have been familiar with them for seven years.

Q. And have you in this period of time also been familiar with such political activity as they engage in? [11] A. Yes, sir.

Q. Have you formed in that regard any conclusions with regard to the willingness of that community to participate in political activity? A. Yes. I find the residents of the Hasidic community to be very aware, politically; ready to do their duty as citizens; ready to vote; very, very much interested in the affairs of New York City and the plans of their community.

Q. Is this a recent development? A. I have seen them growing during the whole seven years that I have worked with the Hasidic community. But even when I first came there, I noted a pronounced interest in community life, Brooklyn life and New York City.

Q. What, in your opinion, would be the effect on that community of the assembly and senate districts being split?

MR. HERZOG: I object. I think the question is irrelevant. It doesn't go to the essence of this issue at all. You might ask that question about any district anywhere.

MR. LEWIN: I think, your Honor, it goes to whether there is peculiar, irreparable harm to this community, regarding it being split, and if the [12] councilman from that district knows that there would be a peculiar harm to the residents of that district, then I think it very much goes to the question of whether there is some particular irreparability of there were a single election.

THE COURT: Well, I would take it subject to a motion to strike later on.

MR. LEWIN: May we have the question.

(Record read)

THE WITNESS: I believe it would break up a very viable, healthy, growing constructive community.

I believe it would materially hurt the people living in that community.

I believe the split is unnecessary, unusual, and would definitely destroy a cohesive neighborhood.

BY MR. LEWIN:

Q. What about efforts in that community to register voters? Would it some way distort those efforts? A. It would certainly deter them from voting as a group, as a single neighborhood, and I know the General Voting Act looks towards building neighborhoods. We in New York City feel very much for our neighborhoods. Williamsburg is definitely a single neighborhood and should be treated that way.

[13] Q. The lines that are drawn are I think drawn substantially along the lines of the Brooklyn-Queens Expressway. Is that area a natural boundary for that district? A. No, I think Mr. Robert Moses, Brooklyn Queens Expressway makes no natural boundary whatsoever. All it did was create a Chinese wall through the neighborhood. But the

Hasidic community has succeeded in living on both sides of the Chinese wall, and still created the neighborhood.

Q. In your view, would the harm to the Hasidic community from going through a single election split with the line down the Brooklyn Queens Expressway be greater in that community than it would be in any other community that would happen to be split artificially?

MR. SCHNAPPER: I would object. I think it is getting fairly speculative at this point.

THE COURT: Well, I will take it, as I say, subject to a motion to strike.

BY MR. LEWIN:

Q. Is there any peculiar harm—let me rephrase it—Is there only peculiar harm in a Hasidic community from going to a single election in which they would be split, than might not be true as to some other community that might happen to be split, for just one election? A. I believe when you realize that the Hasidic [14] community of Williamsburg is one of the most unique communities in New York City, one of the best communities, one of the finest communities in the City of New York to run, inasmuch as they use no school funds, no welfare funds, and run very low on hospital funds, I believe it is incumbent on all of us to do everything we possibly can to keep them as a cohesive happy community, working together.

Now splitting them, even for one election, I think, would be harmful.

MR. LEWIN: That is all.

CROSS-EXAMINATION

BY MR. ZUCKERMAN:

Q. Councilman Richmond, are you aware of the fact that the County of Kings by virtue of the fact that it is presently subject to the Federal Voting Rights Act, that requires that all reapportionment plans must be submitted to the Department of Justice for its approval? A. Yes.

Q. Now, at the time that the 1972 lines were submitted to the Department of Justice, and I remind you that the '72 lines preserved Williamsburg in one senate and one assembly district, did you as an interested observer of the political community write to the Department of Justice and ask them to rule in favor of those '72 lines? [15] A. I personally didn't write, no.

Q. Have you written or otherwise contacted the Department of Justice with regard to their present consideration of the 1974 reapportionment lines? A. Yes, sir.

Q. You have asked them, I take it, to try to preserve Williamsburg? A. I have asked them to try to preserve Williamsburg and other communities which have been wantonly destroyed.

Q. What other communities do you regard as having been wantonly destroyed? A. I consider the community of Green Point to have been wantonly destroyed, too, and—

Q. Would you have any idea as to how many communities there are that are recognized in the County of Kings? A. That is subject to anyone's calculations. Certainly we have 50 to 60 clearly-defined communities in the County of Kings.

And I think it is incumbent upon every politician and every community leader to do all that we possibly can to foster community life.

Q. Do you recognize the fact that there are only [15a] eight full senate districts in Kings County plus part of two others? A. Yes.

MR. ZUCKERMAN: I have no further questions.

[16] CROSS-EXAMINATION

BY MR. SCHNAPPER:

Q. Mr. Richmond, you indicated at the residents of this particular community are interested in community affairs and anxious and willing to vote.

Is that a trait which is limited to white adults of voting age, or are there blacks of voting age interested in community affairs, willing to vote and to—— A. Certainly.

Q. Among the whites, is this characteristic limited to Hasidic Jews, or are there other whites who are also interested in this? A. I believe throughout Brooklyn we have many neighborhoods and many communities who are desperately anxious to stay together, to build, and to vote.

Q. Are there black or Puerto Rico communities which meet that description? A. I would say so.

Q. Would you say that the splitting of these communities would also have an adverse effect on the residents of those black and Puerto Rican communities? A. Absolutely.

Q. Is that in your judgment less important than in splitting the Hasidic Jewish community, or is it [17] equally important? A. I believe it is equally important to foster and build every bit of neighborhood feeling and community feeling that you can possibly produce in the City of New York today. You have got to put New York City back to its neighborhoods, back to the essence of living in New York City. And I believe, in order to do that, we have got to do everything possible to foster our neighborhoods wherever we have a community, whether it is black, white or Hasidic or any other type of ethnic group where it is a clearly defined community. I believe that a community should be preserved the way we preserve important buildings, the way we preserve parks.

It is even more important to preserve people.

Q. Now, I take that under the new districting, that is, under the question here, the Hasidic council lines have not been changed; is that correct? A. Right.

Q. So that even—even if these particular lines are held, the entire Hasidic community would be in the same councilmanic district? A. Right.

Q. Now, are you familiar with the new congressional [18] lines? A. Yes, sir.

Q. And entire Hasidic community would be in the same congressional district? A. Yes, sir.

Q. So that for the purposes of the question here, the Hasidic community is in the same district, and for the purpose of others, it is in a different district? A. Yes.

Q. Is it your testimony or—that if—with regard to the senate, or senate districts, that because of the splitting, an assemblyman might represent only part of the Hasidic community, and would refuse to represent or consider the interests of the Hasidic constituents? A. No, I do not believe that is the case, but I believe the district is so clearly a cohesive neighborhood that it rightfully belongs in one single assembly district so that the one single assembly man can spend a good deal of time learning what the problems of that community are and working with the community leaders from that community, and representing them in Albany, to the best of his ability.

MR. SCHNAPPER: Okay. That is all. Thank you.

THE COURT: Any other questions?

[19] MR. BONINA: May I inquire for a moment, your Honor?

MR. LEWIN: Did you apply for leave to question——

MR. BONINA: As amicus curiae.

Just a few questions not on the merits.

THE COURT: I will allow it, yes.

CROSS-EXAMINATION

By MR. BONINA:

Q. Councilman, when did you first become elected to the City Council? A. I was appointed to fill a vacancy two years ago, and I won my first election about a year ago.

Q. Now, as councilman, there are councilmanic lines, are there not? A. Yes.

Q. And in 1973, were the councilmanic lines challenged in a State court, as unfavorable to the fact of gerrymandering? A. I do not recall.

Q. Well, ordinarily you would serve four years, would you not? A. Yes.

Q. You were on last year? [20] A. Yes.

Q. Are you required to run again this year? A. Right. Yes, you are quite right. The lines were changed somewhat.

Q. And are you aware of the decision of the Court of Appeals in that particular case of our state? A. By the fact that we are running again this year, it would appear to me that the decision of the Court of Appeals indicated that there had to be a new election.

Q. Would it be a fair statement that the decision of the Court of Appeals in that case was that the original councilmanic lines were unconstitutional and that for the purposes of a following election in 1973, you were to run from those lines, and then there was a direction to have new lines drawn for the purposes of 1974? Is that fair and accurate statements?

MR. LEWIN: Objection. I think the witness has testified he doesn't know about that lawsuit. I don't know why Mr. Bonina is interrogating about a lawsuit that he doesn't know about.

MR. SCHNAPPER: If there is a decision, certainly he can submit that decision—

THE COURT: And you are questioning, I take it, as to the substance of the lawsuit?

[21] MR. BONINA: No, your Honor, I am questioning him as to the ruling of the Court of Appeals of the State of New York, having found lines to be unconstitutional and allowing the councilmen to run from those unconstitutional lines for the purpose of one election so that there would be order, and thereafter directing that the lines be drawn for the next ensuing election, and ordering further that the public officials run again the following year, even though their term of office would have been for period of greater than one year.

That is all I choose to ask. Thank you.

THE COURT: Where do you live, Councilman?

THE WITNESS: 43 Pierrepont Street in Brooklyn Heights.

MR. MCGOVERN: Your Honor, the Conservative Party of Kings County would like to ask a few questions in support of the plaintiff's rights.

THE COURT: Yes.

MR. MCGOVERN: My name is Kevin Patrick McGovern for the Conservative Party of Kings County.

BY MR. MCGOVERN:

Q. Now, Mr. Richmond, Mr. Bonina used the term, gerrymandering. Will you tell us what it means? [22] A. I think the word, gerrymander, means redistricting without taking into account the ethnic groupings, the neighborhood groupings, the community groupings of the community who live in the district.

Q. Is it not one of the function of gerrymandering to deny a certain group of voters their effective franchise? A. Absolutely.

MR. MCGOVERN: Thank you.

MR. LEWIN: I have no further questions of this witness, your Honor.

THE COURT: Any further questions of this witness?

(There was no response)

THE COURT: All right, you may withdraw.

(Witness excused)

MR. LEWIN: I think it might be useful for the record to reflect, your Honor, that Mr. Schnepfer, when he applied for leave to intervene, and your [23] Honor gave him authority to appear as amicus curiae, applied for leave to intervene on the side of the defendant. I think Mr. Bonina is sitting at our table, and Mr. McGovern is sitting at our table, and I would like to have on the record just a statement from them that they are on the side of the plaintiff on the merits, if that is correct.

MR. MCGOVERN: The Conservative Party of Kings County is appearing on behalf of the plaintiffs in support of their position, your Honor.

MR. BONINA: The Republican Party of Kings County is in favor of the petition brought by the petitioners, your Honor, as indicated, with modification of the relief request by counsel for the petitioners this morning, that the signatures are the remaining valid throughout the County of Kings, and hopefully, as I tried to point out, respectfully, to the Court, that the lines would remain valid for one election.

And then assuming that the petitioners are right on the cause of action—assuming that the plaintiffs in their petition are correct on the merits—and the Kings County Republican Party feels that they are correct—assuming that that is so, [24] that these lines I would then be formed for a future election, but that for the purpose, to avoid chaos, that the lines remain as they are for this particular year.

That is the position of the Kings County Republican Party. We join with them on the merits. But to avoid chaos, your Honor, in the current election we maintain a position that the lines must be held for this particular year.

THE COURT: You say that the present lines before the injunction of the 1974 statute should be preserved for this year.

MR. BONINA: For the one election, your Honor, assuming that there is merit to the petitioner's cause of action, and we feel there is merit to their cause of action, your Honor, that should not be held to effect this year's election, which would in effect deprive the individuals of their right to vote and be elected from certain lines.

We join with them in the particular application. And if there is a direction from this Court in their favor to redraw the lines, we would hope that for this particular year's election, that they remain, and for the following years, they be kept [25] as a cohesive group. They are a cohesive group, we believe. And we believe there is merit to their cause of action.

MR. LEWIN: If I understand your statement—

THE COURT: What is your position as representing the plaintiff?

What is your position?

[26] MR. LEWIN: Well, our position representing the plaintiff is that the lines as they appear and have been drawn for 1974 are unconstitutional and illegal, and as Mr. Bonina says they are—I think that is his position.

THE COURT: In other words, you don't go along with your friend here on continuing them for this year.

MR. LEWIN: Yes, that is right. In other words, we think if they are illegal there is plenty of time for this year to make those lines for this year. I mean if Mr. Bonina says they are illegal we say that with regard to this community certainly there is reason to correct them for this year as well.

MR. MCGOVERN: Your Honor, the Conservative Party agrees with the plaintiffs completely. We feel that the loss of the elective franchise for one many in one election is intolerable. The loss of the elective franchise for an entire community even in one election is tantamount to tyranny, Your Honor.

MR. LEWIN: All right, at this point, Your Honor, I call Rabbi Friedman.

Rabbi Albert Friedman

having been first affirmed by the Court, to tell the truth, took the stand and testified as follows:

[27] DIRECT EXAMINATION

BY MR. LEWIN:

Q. Now, Rabbi Friedman, you are a plaintiff in this case?

A. That is correct.

Q. And with what organization are you affiliated with?

A. I am affiliated with the United Jewish Organization of Williamsburgh.

Q. Which is also the plaintiff? A. Right. I am also Vice Chairman of the Williamsburgh Community Corporation, which is a community corporation elected by the residents

of Williamsburgh representing all segments of the Williamsburgh population, white, black, Puerto Rican, Polish, Italian, and everything else.

Q. Could you describe what are the United Jewish Organizations of Williamsburgh is? A. The United Jewish Organizations of Williamsburgh is an umbrella organization encompassing all community and social organizations which serve the Jewish people in Williamsburgh. And they are also engaged in teaching the people to help them in their electoral process and register them to vote, and also involved in benefitting the community with various housing projects, non-discriminatory integrated projects.

[28] In short, the United Jewish Organizations of Williamsburgh is involved in everything that goes on in Williamsburgh.

Q. Now, have you personally been involved in the efforts that have been made with regard to political activity? A. Yes, I have personally been involved since my earliest youth, since my father the late Leopold Friedman, was one of the principal community leaders in the Hassidic community, especially in Williamsburgh, so naturally whether I had a choice or not I think I was involved in everything in Williamsburgh politically.

I am also involved in voter registration. I am deputized by the Board of Elections to conduct voter registration. I have been also deputized this year and last year. And every time the voluntary registrations have been set in motion by the Board of Elections I have always been there, among the first people to be deputized to go out and register people in the community.

Q. Would you describe the attitude of the Hassidic community in Williamsburgh towards the matter of voting or participating in political activity? Would you describe that historically?

A. Well, historically Hassidic Jews originated from Europe. In Europe there is no such thing as a democracy. Elections are not something which people participate in in

Europe, especially in Eastern European countries. So this [29] whole concept of participating in the democratic process of elections was an alien thought to many Hassidim.

After when they came to America and when they were involved in the system here in the United States one of the principal duties of citizenship is to participate in the elective process. To vote for people. And especially in communities like Williamsburgh where we had to turn to various political leaders and representatives to help us, we saw it incumbent upon us to make sure that everybody does benefit from that franchise and does participate and does go out to vote.

[30] Q. Historically, is the Hassidic community of Williamsburgh substantially composed of people who were refugees from the Second World War? A. I would say that about 90 percent of the people who were not born in America, who emigrated to America from Europe are concentration camp refugees, however, the young generation, me included, were born in America.

Q. In connection with the discussion had off the record, has the concentration camp refugee experience made the community skeptical of the outside world? A. The refugee experience, the concentration camp experience has affected the community as being very much—what was that word you used?

Q. Skeptical. A. I would even use a stronger word than that. It would be some sort of a mistrust, afraid of the outside people.

Q. Has it taken very strong affirmative efforts on your part and others to get them out to vote? A. It has taken all we could do to have them participate in the system.

Q. As of this moment, is it your view that that effort is in some way succeeding? A. It has been very successful until these new [31] lines, until this year, until this thing started.

It has been very successful. They have been participating. The elective representatives have been responsive to

us, and as well as to other groups, and we were benefiting from the democracy until this thing came up.

Q. What would you view be of the affect of even a single election with the present state of the assembly line? A. Devastating.

Q. In what way? A. It is hard for people to be convinced that they are supposed to be part of the system, that the system will welcome them into this system.

When they see a direct slap in the face as these lines, which nobody is satisfied with, we as a community who represents everybody, they introduced a resolution opposing implementation of these lines, and I think a copy was sent to the Court and the Department of Justice; so everybody feels that the community was given a slap in the face by some line makers.

Last week there was councilmanic reapportion indicated earlier and at that time there were public hearings and people had a chance to speak out.

The City Council tried twice to draw up new lines and again there was a chance for the public to be [32] involved in that.

When the second lines were overturned by the Court, then it was, I think it was in October or November, and the petitions were already in and that is when they decided to make new lines for next year, for this year for councilmanic purposes.

Q. Were you hurt by these lines? A. Yes. We were definitely hurt by these new lines.

Q. I am sorry, were you heard as far as your views with respect to the 1974 lines? A. No. We first found out about this thing when the letter came from the Attorney General on April 1.

It just came from the State, Mr. Zuckerman, disallowing the 1972 lines as unconstitutional.

At that time we contacted counsel to see if there was anything we could do to protect ourselves.

Counsel told us the State is going to Court and they are the ones who are to fight this thing.

There was a law suit initiated by several legislators at that time against this ruling by the Department of Justice.

The fact that the Justice Department took 60 days to disallow the old lines of April 1, this did not allow us much time to participate.

[33] We tried everything to be heard, that we were dissatisfied with their ruling.

At that time we were not a party to this case. When the Senate called a special session to draw new lines we again tried and we assumed, which was the usual procedure for the committee, to hold hearings to speak out on this matter, however, our State Senator who was a member of the reapportionment committee, told us we were assured that we would be heard.

When we found out about these lines that were detrimental to us, it was Friday afternoon and at that time we sent off telegrams to everybody we could think of asking to be heard.

Sunday morning about noon we saw the new lines, that they were hurting us. Monday and Tuesday was a Jewish holiday, May 27 and May 28, it was Shavuot, and because of our religious belief we could not do anything on Monday and Tuesday. It was our constitutional right to practice our religion the way we wanted to.

Wednesday morning the Senate was in session voting on these lines.

THE COURT: This is later in May?

THE WITNESS: Yes, May 29.

That day they approved the new lines.

[34] of intervention that we could think of.

I didn't go to Albany because I felt in Brooklyn we could get across to people better than in Albany.

We had our district leader in touch with us. We tried to get in touch with the county leaders.

We used every way to try to voice our objection to it. Subsequently, we found out they were considering amendments and that certain people realized there was an injustice to us. They tried to make an amendment but didn't. The Assembly and Senate adjourned on the 30th without giving us relief.

At that time we waited to see the new lines. As soon as possible thereafter we contacted legal counsel to see justice was done to us.

After, the lines were drafted suddenly and without notice and passed by the legislature.

Q. If they were used for this coming year, what affect would it have on the Hasedic community? A. The voting drive has stalled because of this.

People are saying that the registration drive, that is, people are saying we feel they don't care for us and if we were one of the first Jewish communities active and to be broadminded, we are not to back just people because they [35] are Jews. We are to back people who are responsive to us. In the last primary we backed an Irish Catholic.

Q. In terms as to affect, as to the registration drive, would you please tell us about that? A. The people felt they were being alienated.

Q. Is the original skepticism coming out again? A. Yes, much stronger because the younger generation, they do not know the European experience firsthand, but they feel they are getting a taste of the same thing themselves.

Q. You mentioned the past pattern of support for candidates running from that area. A. Right.

Q. Has there been in your view any racial pattern, racial or religious pattern of voting? A. Definitely not.

Q. Has the Hasedic community voted and supported a minority race candidate? A. Yes.

Q. Give us an instance. A. I will go back to the last primary in 1972. The last primary based on the lines under discussion at that time the candidates for the Congress-

sional district were Alan Lowenstein, a Jew, Irving Gross, a Jew and John J. Rooney.

The Hasedic community came out in full support [36] for John J. Rooney.

At that time there was a primary for co-district leader, Mildred Marchiano, a white woman and a Mrs. Martinez.

The Hasedic community voted for the Puerto Rican. Those two had to have a rerun because the Court of Appeals nullified the election and there again the Hasedic community voted for John J. Rooney and they voted for Theodora Martinez, the Puerto Rican.

If you go back to other races, our attitude was to support people regardless of race, color or creed.

Roy Wilkins, leader of the NAACP, his column in the Post mentioned this fact after that primary. He mentioned how the Hasedic community backed John J. Rooney again over Lowenstein and backed a black candidate.

He mentioned how the Hasedic community was broad enough to go for the candidates fair minded to all. He instructed the NAACP and all black leaders to take into cognizance of this fact that a person can be represented.

Q. During your testimony with Mr. Schnapper, he asked about the Hasedic community, whether it is still unified in the councilmanic and proposed Congressional district.

Is that in your view adequate representation for the Hasedic community as a unit? [37] A. Definitely not.

First of all I would like to take exception to the previous assumption because in the councilmanic district there are some Jews out of the district. However, we feel, my opinion is, you cannot give us half of the Constitution.

We are full citizens and are entitled to everything. If we vote for a Congressman and a State Senator and a Councilman and everything else, we should benefit and be able to vote for everybody in the same manner and not just give us half a pie and give us one community and take it away from the other districts.

Q. Have there been particular concerns in the Hasedic community that you have only the lines for the State Assemblymen and the State Senators? A. Definitely, the Congressman, they are most effective in helping us in Federal areas and councilman is effective in helping us in City registration, however, the State supersedes the City.

The State Assemblyman and the State Senator is the person we turn to who will try to help us in our needs in the community.

Q. The Department of Justice letter which invalidated the '72 reapportionment in part spoke about the fact that the minority race communities were concentrated [38] in neighboring assembly districts to your own.

Do you know the percentage of the minority race population, what it was in the 57th Assembly District prior to 1974? A. Yes, the 1972 lines gave us a minority percentage of more than 60 percent.

Q. Are you objecting or are the plaintiffs in this case objecting to being in a district that is more than half minority race? A. No.

Q. And if fact you were, prior to the 1974 lines? A. We were 60 percent minority district until now and we definitely do not object to that.

Q. You talked about previously the fact that the Hasedic community does not vote on racial lines.

Does it vote on particular party lines? A. No, if it is all right with the Court, I can list who we backed: In 1972 we backed Nixon against McGovern. In 1972 we participated in the Republic district leadership fight.

Some insurgent, Robert Fenn, and Marie Terrabasso, they had a primary against the incumbent leader who was Mike Chiasano and Maria Terrabasso.

Mike Chiasano did not seek our support and [39] Marie Terrabasso did.

She felt the Jewish community should have representatives in the County committee and we accepted that.

For the first time there were Hasedic Jews on the Republican County Committee, and we won.

We also have a Conservative party who is an Hasedic Jew who is a complainant in this case.

In 1972 we backed Richard Nixon.

In 1968, at that time we backed Humphrey. We backed the Kennedys and we backed Rockefeller. Both Buckley and Hodell had more votes than Mr. Ottinger.

Q. You backed Democrats as well. A. Sometimes we did.

In major races we backed more Republicans than Democrats over the years.

MR. LEWIN: That is all I have.

CROSS EXAMINATION

BY MR. ZUCKERMAN:

Q. You say you are aware of the Pottinger ruling of April 1, 1974? A. Yes.

Q. From that time until the end of May, did you or your organizations make and attempt to contact the New York joint legislative committee on apportionment? [39a] A. Yes, We contacted our Senator, Senator Chester Straub, our State Senator, a member of that committee.

[40] BY MR. ZUCKERMAN:

Q. And do you know what Senator Straub did? A. He told us afterwards everything was done and did not have a single chance.

His district was also cut into pieces.

Q. That is hearsay—

MR. LEWIN: Counsel has asked for hearsay and he got it.

Q. What did you do individually? A. We contacted Senator Straub to voice our objections to it and also our attorney, Abrahm Gurgis and Joseph Slaven had a case in Washington and he also fought the Pattinger ruling.

I was getting in touch with you but you were sitting shiva at that time.

In other words, we tried to do everything we could.

Q. How large would you estimate the Hassidic community is in Williamsburgh? A. Based on the census track, I would say the wide community, we never did an accurate count, but based on the census track there are about 35,000 white people in the Hassidic area of which 80 to 90 percent would be Hassidic.

Q. Now, you have testified as to how the Hassidic [41] community voted in prior elections.

Are you implying they voted 100 percent for individual candidates? A. The election process is secret, so that I could not state how anybody voted.

Analyzing the returns we see our endorsements are favorable to the community.

Q. You are talking in terms of majority of Hassidim? A. Right, that majority.

CROSS EXAMINATION

By Mr. SCHNAPPER:

Q. I believe you testified in response to Mr. Lewin's question that you did not have any objection or did any of your organizations which you remember to being in a community which happened to have a non-white majority? A. I testified that we are right now in a district which has a non-white majority and we do not object to those lines.

Q. What you do object to is being split between districts? A. Basically we object to being split, correct.

Q. I take it then if you were in a district which was, you said the present 57 is 60 percent non-white.

[42] If you were in a district which was 75 or 70 percent non-white you would not object as long as you were in the same district all together? A. If we were kept together without cutting us up we wouldn't play the percentage game.

Q. I call your attention to the new Congressional lines. It is my understanding the new Congressional lines are about 75 percent non-white, the new 14 Congressional district which you are in? A. Yes.

Q. You are in the same district in that regard? A. I take exception to that because Councilman Wright indicated we are only 60 percent non-white. Let us not play numbers. It is majority non-white.

Q. If it was 75 percent non-white you would not mind? A. We wouldn't mind, being in the same district if it is a majority non-white, however, that has to be challenged. We are complaining about the Congressional lines because that was illegal and unconstitutional. That is also mentioned in the complaint.

Q. I am not bouting your opinion and if you were a lawyer I am sure you would be an excellent one. What hurts your community is being in different districts? [43] A. We are being gerrymandered and cut in half. If we are in one community that is true. We are complaining against everything at this time because everything was illegal.

Q. With regard to your efforts to get people to register and vote, I take it your efforts have been successful there? A. Yes.

Q. Do you have any idea what the level of voter registration is in the Hassidic community? A. I would still say it would be probably, I would think it would be less than 50 percent but I could not give you exact figures. I cannot play the game of numbers.

My judgment is there is still a lot to be desired. We have a lot of 18 year olds, some people turning 18 year old and then we have other people for some reason or another moved and skipped elections. You will find percentages all along those groups.

We do have a large number who still have to be registered for reasons beyond their control or otherwise.

Q. I take it you indicated you were now having problems persuading people to register? A. Yes.

People are reluctant to register.

[44] Q. Am I correct in understanding that the reason for that is because you are now split in senate lines? A. The reason is things were done against us, so what is the basis for voting and more specifically that cutting in half plays a major role in lack of people's participating.

Q. Feeling their votes would mean less because in an upcoming election their votes would be split? A. Our votes mean nothing because powers are doing things without thinking of us.

Q. You indicated that you felt you hadn't been heard on the 1974 redistricting process? A. That is correct.

Q. Do you have any information to lead you to believe there were hearings in which other people were heard, that you were somehow excluded from or there were no hearings for anybody? A. The only hearing I know of is the NAACP filed and I cannot answer that.

Q. There was no one preventing you from filing a plan? A. I cannot answer that. I don't know what the process was. We expected a public hearing.

Q. There were no public hearings at all? [45] A. No, and no chance for a valid input.

Q. It was not a question where there were public hearings where only blacks could testify? A. No, there are more blacks and Puerto Ricans on that Board of Directors and they also felt they had no chance. Everybody is upset over these lines.

Q. With regard to your mentioning the plans being submitted to the joint legislative reapportionment committee, you didn't go to the Post Office and they turned you back? A. I personally—

MR. LEWIN: We will stipulate there is no plan submitted. That is what the witness testified. There is no reason to ridicule the witness with this type of questioning.

MR. SCHNAPPER: I am sorry. I did not think we had it for the record.

Q. You indicated you felt it was important for the Hassidic community to have members of the Senate and Assembly responsive to your concerns and needs.

That is why you are concerned about your redistricting; is that correct? A. Who would respond to us, recognize us as a part of his district. That is correct.

Q. Do you think your need, that the blacks or [46] Puerto Ricans do not have the same need? A. They definitely have the same need.

Q. Your need is not important, not more important than theirs? We are all American citizens? A. Every citizen is entitled to that need.

People are underprivileged and deprived and if they are a community then it hurts more there.

Q. But if blacks— A. They should also have a chance for representation.

Q. Are the Hassidim in Williamsburgh the only ones in Brooklyn? A. No, Boro Park and Crown Heights.

Q. Those are the main other communities? A. Williamsburgh is the largest.

Q. There are two other large communities, one in Crown Heights and one in Boro Park? A. Yes.

Q. You are not objecting to the fact that you are not in the same district with those Hassidic Jews? A. We are. We go down as far as Eastern Parkway. We don't ask to have everything turned around to our liking, but we want reasons to prevail.

Q. You are not in the same district as the Hassidic [47] community in Boro Park? A. No, that would not be possible.

MR. SCHNAPPER: That is all.

REDIRECT EXAMINATION

BY MR. LEWIN:

Q. In answer to Mr. Schnapper you said that there was still less than 50 percent of the Hassidic Jews in Williamsburgh registered.

I think you said that was due to a variety of reasons.

One of the reasons I don't think you mentioned, that it also is a fact, that there are still a very substantial number of Hassidic Jews in Williamsburgh who are reluctant and isolated and therefore not ready to register? A. Yes, I am sorry I did not answer that.

Many people have the European syndrome, the concentration camp syndrome they all have and this effects them and all this is heightened by this slap in the face.

Q. Would that be cured in any way by your district being put together the following year? A. The harm done this year would be irreparable.

[48] THE COURT: Yes.

MR. LEWIN: Your Honor, are we finished with Rabbi Friedman? There may be people out in the hall.

MR. BONINA: Excuse me for being late.

THE COURT: You may proceed, counselor.

MR. BONINA: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. BONINA:

Q. Rabbi, to go over your testimony very briefly, the Hassidic community is located solely within the Congressional District, is it not; in other words, the Congressional District—the 14th Congressional District does not exclude the Hassidim? A. No, it does not exclude them.

Q. In that respect the object of the Hassidic community is to remain as a cohesive unit insofar as the 14th Congressional District is concerned; is that right? A. To be together, they are all in the 14th Congressional District, that is correct.

Q. So that there is no complaint about the Congressional District; is that it? A. As I indicated earlier, the complaint, the way it was set up was illegal and unconstitutional, however we are all in the same district.

MR. LEWIN: Your Honor, may I, for purposes of [49] this particular preliminary injunction, state that we are seeking—that there is a difference between the Congressional District and the Senate and Assembly Districts, in this sense we think there is a much stronger basis for preliminary relief based in irreparable harm which derives from the Senatorial and Assembly Districts than there is from the Congressional District.

THE COURT: Yes, I understand.

BY MR. BONINA:

Q. We do know each other, do we not? A. Since Monday.

Q. Well, we had shared a dais before that. A. We shared a dais with a county committeeman and with other people, too, whom I don't remember. I think the Judge was there.

Q. In fact, you came here to this court today, am I correct, and your position is that your elected officials do no longer represent you as a cohesive unit, that is, the Hassidic community, that is, with reference to the Senatorial and Assembly lines? A. That is correct, but also the other positions you forget to mention, the Assembly Petition also has candidates to the judicial—

[50] Q. We will get to that, Rabbi, but basically you are speaking about your elected officials from the Assembly District and your elected officials for the Senate, too? A. And the District leaders.

Q. Yes, and for the Senate, am I correct? A. And for State Committeemen.

Q. Well, now, Rabbi, when you speak about State Committeemen, you are speaking about the Internal Affairs of a political party. A. But registered voters participate in the internal affairs of political parties.

Q. Yes, they do, and in your community you have registered voters— A. Of all parties.

Q. Of all parties? A. Yes.

Q. Now, then, is it fair and accurate to state that there are registered Liberals who are Hassidim, registered Con-

servatives who are Hassidim in your community, that there are registered Republicans who are Hassidim and there are registered Democrats who are Hassidim? A. That is entirely correct.

Q. Now, then, in fact, the Hassidim participate, do they not, in the internal affairs of the four political [51] parties? A. They participate in the affairs of every party where they have voters, that is correct.

Q. Now that being correct, then, Rabbi, isn't it also correct that having participated in the four political parties the Hassidim then are not acting as a cohesive unit but are now divided into the four political parties? A. That is not so; to be an effective cohesive unit you participate, but you don't force somebody to go along with one party, that is undemocratic, so everybody is entitled to the party of his choice. However, we make sure that whatever people are participating they participate fully in the process, that is in the strength, otherwise our cohesiveness would not exist.

Q. Your cohesiveness is as Hassidim? A. As Hassidim and as a group of voters.

Q. Now, in any of your papers do you challenge the party positions that are sought for by the various individuals of the various political parties as unconstitutional? A. I don't understand.

Q. You don't understand the question? A. No.

Q. This year, am I correct in this, in this year the various candidates in the four political parties seek [52] party offices? A. That is correct.

Q. And those party offices include county committeemen; do they not? A. Yes, sir.

Q. They include state committeemen; do they not? A. Right.

Q. And they include judicial delegates; do they not? A. Correct.

Q. And in the Democratic Party I think there is even a national committeeman. A. That is correct.

Q. Is that correct? A. Yes.

Q. Now, in any of your moving papers do you ask for relief against the political parties that are involved? A. I don't understand, it is a legal question, I can't understand it. I didn't study the papers, I am not a lawyer. I can't answer that.

If you ask what the papers say along those lines, I don't understand.

Q. Have you joined the political parties, the four political parties in as party defendants in this action?

[53] MR. LEWIN: I think we can have a stipulation that the papers indicate that the parties are not a part of—the political parties are not a part of the action.

MR. BONINA: So that in fact we have a stipulation that the party position sought for in any of the four political parties are not a part of the moving papers, counselor?

MR. LEWIN: The challenge in this lawsuit is to the lines drawn for the 1974 elections for Assembly, Senate and Congressional Districts.

I myself don't understand the import of the question as it applies to that challenge. That is what we are challenging.

To the extent that that incorporates the challenge to whatever primaries may be conducted in view of those lines, yes, we are challenging something that has to do with the political parties. To the extent it does not involve primaries, we are not challenging the political parties and they are not necessarily a party of the lawsuit.

MR. BONINA: Well, that is a question of law, counselor.

MR. LEWIN: I have just advised that we are [54] challenging the assembly lines and because all the assembly lines in the state are in the same as the state committee lines, then I suppose we end up challenging the committee line because we have challenged the assembly lines. But we don't have to join the parties to do that.

MR. BONINA: I have no further questions, Rabbi.

THE COURT: Any further questions?

MR. SCHNAPPER: If I may be permitted to ask a few more questions, your Honor.

THE COURT: Yes.

[55] BY MR. SCHNAPPER:

Q. Rabbi Friedman, will you describe the voter registration activities in which you and others have engaged in in Williamsburg since May 29th of this year when the new lines were enacted? A. Yes, sir.

Q. Will you describe those activities. A. In what relationship, how we registered people?

Q. What have you actually done to register people? A. We announce, we put it in flyers, we mention it in the newspapers and in local newspapers the registration, and whenever we meet in a synagogue we ask, "Why don't you register," "Come up to register."

We continually ask, "Why don't you register," we ask people and that is how we get our first-hand reports, people tell us, "Because the system is against us."

Q. Are you a Deputy Registrar? A. We have Deputy Registrars.

Q. And they have been registering people? A. Yes, sir.

Q. Can you tell me where? A. All over Williamsburg, 82 Lee Avenue, among other places, wherever designated, I don't remember the whole list, I can't answer that.

[56] Q. Do you have statistics as to how many people have registered with those Registrars in the last—since May 30th? A. I don't have it with me.

Q. Can you tell me how many letters you sent out urging people to register? A. I will go back to the first question, I do remember that before—well, let me say that we have to take them over to the Board of Elections every week or so, that is the completed registration, and there were much, much, much more, and I don't remember having taken any up within a recent date, lately.

Q. Well, can you tell me for example, and it has been now approximately three weeks since the new lines were enacted,

can you tell me how many people you have succeeded in registering in the three weeks before the lines were announced? A. Personally, what I have been registering, it would be less than 100.

Q. You alone registered that? A. Which I signed as Registrar, to be less than a hundred.

Q. A hundred people? A. Less than a hundred.

[57] Q. Well, about how many? A. Between 50 and 100.

Q. Maybe 50 to 100 in that three weeks alone? A. Which I signed my name to, and most of them are 18 years olds who have first become eligible.

Q. Was that in connection with a school? A. No, that is how we operate, we register people as soon as we can register them.

Q. I see.

You personally haven't been able to register anybody in the last three weeks? A. Personally, I don't remember registering people, I was busy with the court case, of course, and that would be the answer.

THE COURT: When you say, "register," do you operate in a polling booth?

THE WITNESS: No, you see, I am a Deputy Registrar, we can register outside as an extension of the Board of Elections, we have to be trained by them and to be sworn in. It is a whole procedure which we go through every year.

BY MR. SCHNAPPER:

Q. I take it that in the last three weeks you have been primarily busy with this litigation. [58] A. I said this week I have been primarily in this litigation and that is why I am hard-pressed to give exact figures under oath as to what happened.

MR. SCHNAPPER: Thank you, thank you.

MR. MCGOVERN: I am Kevin Patrick McGovern, I represent the Conservative Party.

CROSS-EXAMINATION

BY MR. MCGOVERN:

Q. Rabbi, do you know what the term gerrymandering means? A. Gerrymandering is a dirty word when it comes to a community, that means cutting up communities, depriving them of that which is their just right.

Q. Do you know what the effect of gerrymandering a district is? A. It is to alienate the voters in the district.

Q. Pardon? A. To hurt and to alienate the voters in the district.

Q. Would you say it was to disenfranchise the voters of a particular group or community? A. That is exactly what I have said in different language, it does disenfranchise the voters in a community.

Q. If this election were allowed to stand with the [59] lines drawn, would you say that the election franchise would be denied to the Hassidim? A. Definitely, which I started to indicate before as to the judicial convention delegates. There the convention nominates people to be Supreme Court Judges for 14 years.

Now, if you go for this this year and leave these lines and then the next year you make another election, those judges who are nominated, they will be on the bench next year and for 14 years, so anybody running for judicial delegate, he will suffer irreparable harm if he cannot represent the whole community, the entire group of voters.

Q. Well, to clarify the point, the judicial delegates or the alternate judicial delegates are chosen from the assembly districts? A. I mean the candidate from the 57th Assembly District, that is correct.

Q. You mean the Democratic Party, the Conservative member? A. Yes.

MR. MCGOVERN: Thank you, Rabbi.

THE COURT: Anything else, gentlemen?

All right, you may step down.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

[60] MR. LEWIN: I will call Mr. Abraham Gurgess.

Abraham Gurgess

residing at 195 Adams Street, called as a witness on behalf of the Plaintiffs, having been duly sworn by his Honor, Judge Bruchhausen, testified as follows:

DIRECT EXAMINATION

BY MR. LEWIN:

Q. What is your profession, Mr. Gurgess? A. I am an attorney and I am also the executive member of the 57th Assembly District.

Q. You are elected to that post? A. No, I was appointed to a vacancy that occurred in 1972.

Q. And is that a district leader? A. That is correct.

Q. And is there another district leader in that district? A. A female district leader, her name is Theodora Martinez.

Q. Was she elected? A. She was elected.

Q. So is that the district in which the Hassidic community of Williamsburg resides? A. Yes, sir.

Q. Were you familiar with that election in which [61] she was elected? A. Yes, I am.

Q. And in the course of that election, did the Hasedic community of Williamsburg support any particular candidate? A. Well, there were several candidates running, some of them were of the Jewish faith, some of the Spanish faith, and they supported Theodora Martinez.

Q. As against a Jewish candidate? A. That is correct.

Q. Are you familiar with the voting patterns of the Hasedic community in at least in their public purported candidates? A. Yes, I am.

Q. And has that pattern been to support Jewish candidates particularly? A. No, it hasn't.

Q. Has it supported anyone along racial lines? A. No, it hasn't.

Q. How would you describe the factors that go into the decision of the Hasedic community, that is what factors determine whom they are to support? A. Well, the Hasedic community is a small, relatively small community and covers the 57th Assembly District. They are involved with people of all ethnic [63] backgrounds, and particularly sit on committees, and here I am referring to Albert Friedman who sits on the board with people of all nationalities, black, white, Spanish, et cetera.

I think over the last several years the people of the 57th Assembly District have learned to work together, and I think this is really the injustice that we are talking about here today, it is that the people having worked together now are told that they can no longer work together because they are of a certain race.

Q. Would this in your view lead to encouraging voting along racial lines? A. Absolutely, it is pitting, it is pitting one race against another race, which I do believe was not the intention of the law suit which was filed and successfully taken by the NAACP.

Q. So is it that by the action that was taken in dividing up this community because of racial factors, therefore, members of that community are being encouraged to vote for members of their own race. A. Well, I think, I think that might not be what is on the top of the lever, that is what the talk is around that we hear, we are being at this point told that we must have someone of a certain race representing us as opposed to having a good man representing us.

[64] Q. You have heard Rabbi Freidman testify about voting registration efforts in the Hasedic community.

Do you think from your familiarity with that community that they would be affected by this division in the community in half for this 1974 election? A. I think it would be, the same as any community, whether it be Spanish, black or Hasedic. It just happens to be that the Hasedim are in this district specifically, and it would be the same as if it

were purposely divided because of race, which I believe to be unconstitutional.

Q. Well, would it slow down the registration in the Hasedic community? A. Yes.

Q. Would it discourage voter participation in the Hasedic community? A. Well, it would discourage them because of their unawareness. Even to myself at times I have difficulty in knowing who the Senator is, from what part of the district, and who the assemblyman is and from what part of the district and where the lines are exactly drawn.

I think, I think what has to be brought out before this Court is that the purpose of having smaller areas and an assembly district is because in the course of the legislators they find that someone must know the smaller [65] area, the smaller problems within an area, a Congressional district, for example, covers a much larger area of space, most of the Congressmen are in Washington and can be contacted but they handle several hundred thousand of people.

A Senate district similarly handles a certain amount of people and the Assembly District handles approximately, if I am correct, 120,000 people and there is a much closer relationship between the people who live in the district and those elected officials, which makes an awful lot of sense because they had daily problems which they come to you on.

Now very specifically in the Hasedic area, the Hasedic area, these people have a very stringent philosophical religious belief, and I will give you an example of what the division does do; for example, at the present moment, they are seeking to put up a nursing home in the area there. A nursing home is needed specifically for Hasedim because they have certain religious needs——

Q. Food? A. Food, et cetera.

Now, I believe a black assemblyman could do just as good a job as a white assemblyman, without any question of doubt in my mind.

However, if you have a district cut in half and where you have a single problem, it would be very, very [66] difficult

for two assemblymen to be working, even if they may be working together to solve the problem, rather than having one person working on a specific problem that entails that whole community.

I would say that, as I think the testimony here before has said, that no matter where you put a group, the important thing here is geographically to make sure that they are together, and to deny them the right—and when I say “them” I mean black, Spanish, or Hasedim, to deny them the right to be able to be together where they have similar problems well, is actually a spit in the eye of our Constitution.

Q. Now, were you involved, Mr. Gurgess, in any of the discussions with the Joint Committee on Reapportionment in the State Legislature? A. Yes, I was.

Q. And prior to that time that this 1974 reapportionment was drawn up? A. Yes, I was.

Q. Specifically, with whom did you talk? A. When I heard that lines were about to be drawn, I sent registered letters, return receipt, to Mr. Zuckerman; I sent letters, return receipt to the Justice Department, to Mr. Duryea, to Mr. Wilson, [67] Governor Wilson, to Senator Anderson, and I requested them to give us an opportunity before they would be implementing any lines to have the community give their side of the story and give their input before those lines were put into effect, no matter what those lines would happen to be: I did this specifically on the request of the Hasedic area and the black area, who were just as concerned with the lines so that they would not be gerrymandered as they felt in the past they had been.

[68] Q. Did you get an opportunity to be heard of that request? A. No, I didn't. I received a letter back from Mr. Zuckerman who had indicated as I recall that I should be in touch with the Justice Department, but to date I have not received back anything except my little card which said they had received my letter.

Q. Was anything communicated to you from any member of the JC Committee on Reapportionment regarding the reasons why the lines were drawn as they were for 1974?

A. Yes, they specifically told me that race did not play a part in the drawing of lines.

Q. Just a part? A. A specific part.

I did meet with Mr. Scolaro. I was up in Albany when the lines were being drawn, I brought my own census tracts, we tried to analyze the various census tracts prior to going up there so we would have some kind of an input and at least know partially what we were talking about.

While I was up there I did meet with Adrian Shill, who is a representative of the minority leader, Stanley Steingut, and Mr. Scolaro, at the date which would be the date of the special session, and I spent two days up there without sleep all those two days.

I had specifically been in touch with him in reference [69] to keeping the Hassidic community together. I asked them to place it anywhere they wanted to except that they should keep them as a whole and do not divide them.

On three instances they had to put it into the computer, some of the recommendations that I had made, and they did finally come up with an indicated that if they kept them together, they would 53.4 per cent of white—of, of black within the district.

Q. You mean by “black,” you mean minority? A. Minority.

That is wrong, I didn't mean “black,” I meant minority.

Q. Blacks, Puerto Ricans,— A. Right, blacks and Puerto Ricans.

They did indicate to me that in their talks with the Department of Justice, that is, during these conversations, they had had it indicated to them that they must have 65 per cent minority.

I did indicate to them that I thought it was unfair when we talk about a community to be talking about a percentage of 1 per cent and felt it would be much fairer to talk about

geographically, that whatever the percentage is, the per cent black, that geographically is what it should take into consideration when they set their lines, and not purposely say, We must divide the Hassidic area because they are white, because that would mean separating them into at [70] least two different districts.

I further spoke to them with reference to senatorial lines and I advised them that senatorially-wise that to be talking about race was wrong, that in my opinion blacks and Puerto Ricans have been gerrymandered in the past and that it is injustice to gerrymander blacks and Puerto Ricans and that one must not do the exact same thing that the Constitution was talking about by reversing it and giving it to the Hassidim, that this was wrong.

Q. It was your understanding that the only reason that 63.4 per cent was not adequate was because it had to be a specific minimum racial percentage in the District? A. I had suggested to them that at that point when they had brought the Hassidim district together, and I believe it came out to 62.3 per cent, I had suggested to them that they pass those lines, and if after they passed those lines there should be a separateable clause within the legislation and that was given so that in the event the Justice Department felt that that would have been unconstitutional that we would then go back to the lines as drawn by the legislatures. This seemed to be some kind of a compromise and seemed to be moving ahead. I know that Assemblyman Streisand was very much working in that direction as well, and then the session was adjourned to the following morning, and this is only upon information and belief, I have no direct knowledge, of course [71] but I understand that the leaders of the various houses as well as Governor Wilson had at that time indicated that he would not go along with a separateable clause.

We were negotiating continuously and talking continuously, and as I said this was going on over the two days when one of the houses seemed to adjourn, and that was it,

the Senate seemed to adjourn while we were in negotiation and the Assembly had to be called back after adjournment because they felt there was an injustice done, and they had passed a resolution changing a part of the lines, that which of course could not be instituted into law because it was just a resolution. Many of the members were already leaving. But I think everybody up there whom I spoke to, including the black legislators, had indicated that they felt it was a wrong, and I am specifically referring to Calvin Williams who represents the 56th Assembly District, he indicated that he was willing to change the line so that the lines would be the same for the Hassidic area. Jeffrey Anderson who is the Democratic Executive member of the 56th Assembly District had indicated that he also felt that this was wrong, that the line should be changed so that the Hassidim could be together.

For the information of this Court, and I think this may be important, there are two specific districts, the 56th and the 57th Assembly Districts, which are joining, and there are approximately 16,000 registered—16,000 in [72] population that was taken directly out of the 56th Assembly District and brought into the 57th Assembly District, and the Hassidic area which represents approximately 15,000 votes were put into the 56th Assembly District.

I would indicate, without going into the aspects of the Congressional or Senatorial problems at the present time, that it would be very easy to merely transfer those election districts which I think number four from the 56th to the 57th, and from the 57th to the 56th, and population-wise you would end up with the exact same population and you would have a cohesive area for both areas.

I think the legislators of both areas are also in accord and I should indicate that the legislator in one area happens to be Jewish and in the other area, which is called Williamsburgh, he happens to be black.

Q. What is your understanding from these negotiations with the legislative committee, is it to the effect that the

only reason that this was not done was that he Hassidic community is white? A. Yes, sir.

Q. That was the only reason that was not acceptable? A. That is correct.

[73] Q. Mr. Gurgess, you testified, if I remember correctly, that in your judgment the Black and Puerto Rican communities in Brooklyn had been gerrymanded; is that correct? A. I think the black and Jewish communities, the Black and Puerto Rican communities have been gerrymanded throughout the United States.

Q. Well, I think the Court's jurisdiction is somewhat more limited.

Let us talk about Kings County.

Is it your judgment that it was gerrymanded not only in the '74 lines but the previous lines, in Kings County? A. I came to that conclusion by merely looking at a map, and by looking at a map and having some indication as to how lines should be drawn, they seem to indicate, without any personal knowledge in my mind, that geographic areas were not used to bring about lines but there were other reasons, and that would lead me to surmise by that inference that there probably was gerrymandering.

Q. Well now— A. And I would say the gerrymandering does not mean that it is racial gerrymandering, gerrymandering also means for example that the Democrats who may be more powerful [74] and I'm not really talking about whether they are Democrats or Republicans, but they may gerrymander a block because they feel that there is someone living on that block that they don't want in their district, and it may very well be the Republican Party that would say that they would want to make a better assembly district for a Republican who may be running, or it may be a Democrat who may say he wants to have a better assemblyman, and for that purpose it may be done.

I think there are many, many reasons why lines are drawn, and I would indicate that in my opinion that there are also racial reasons which are improper, and I am talk-

ing now about the Black and Puerto Rican communities, and that such actions are improper on their behalf.

I think that it is wrong to draw a district for a candidate, I think it is important to draw a district for people.

Q. Now if I can just get back to what you said before, you said that the district lines in Kings County had been gerrymandered against Blacks and Puerto Ricans and that there may be other kinds of gerrymandering: Is that your testimony? A. No, it is—I think I will stand on what I said.

Q. Well, you will stand on what you said the first [75] time or the second time, on direct you made it pretty clear you thought there was gerrymandering against Blacks and Puerto Ricans, or do you take that back and say what you just said? A. No, no, I am saying there is gerrymandering of all different kinds, I think racial gerrymandering is of race.

Q. So that has happened? A. I think so.

Q. Okay.

Now, can you tell me in what way Blacks or Puerto Ricans could be harmed by gerrymandering on the basis of race? A. Gerrymandering in my opinion, in my opinion the definition of gerrymandering is the exclusion of people purposely to be able to vote for a candidate by leaving them out of the electoral process, and that is no matter whether that is race or color, maybe, and so for example if you purposely put in a very very minor amount of Blacks or Italians, which is presently happening in another district, then what normally happens, not because—not because this is the only answer but because of the human being, if you are in an Italian district and it is all Italian and you put in a Jewish name, an Italian name, my experience has [76] been just as a fact that the Italian will probably win.

Q. If I may, let us get back to the racial question:

Suppose it were the case, and I think the evidence indicates it was, that you had half a million Blacks and Puerto Ricans living in a contiguous area and that you have Blacks and Puerto Ricans, for example, in overwhelming majority

in two senatorial districts, and that instead of being in those senatorial districts they were split among five or six and were thereby not a solid majority in any one district, would that in any way harm the Blacks and Puerto Ricans?

A. Of course it would, if that was your purpose.

Q. They would be harmed, whether it was the purpose or not, the lines would be in the same place. A. If the purpose of doing that was to exclude them from giving them the rights of bringing up their candidate whom they might want and who might be of a certain color, of course it would hurt them.

Q. Do you think it would tend to alienate the Blacks and Puerto Ricans because they felt that it was like they had been slapped in their face because the community was split up? A. It certainly would, but I think it would go a [77] little beyond that, I think what would happen, and I think specifically in the Black and Puerto Rican area, I personally believe that the answer, the true answer to having good representation and equal representation is heavy registration—

Q. Let us not— A. And if I can finish, if I can finish, if there were heavy registration that means people go out and vote.

The reason why there is not heavy registration is not because of gerrymandering, that is not one of the reasons, the reasons that people don't register and vote is because a lot of people are turned off, the poor in this respect that when they don't have housing and they don't have schools and they don't have all of these things and there are people of all different races, they find, no matter whom they elect, that they still don't have schools and housing, etc., and they feel that their vote doesn't count, and that is what, in my opinion should be the push of people who are really concerned about saving this country.

MR. ZUCKERMAN: Your Honor, I have to object to the question that was just asked, it implied that there is evidence that there are some 500,000 Blacks and Puerto Ri-

cans who were divided into five senatorial districts where they did not have a majority in any one of those districts, the evidence [78] simply doesn't point to that.

If it is hypothetical, that is one thing, but I don't think the record should show there is any evidence to support that question.

MR. SCHNAPPER: I think there is, but it is not necessary to resolve.

We will regard that as a hypothetical question.

BY MR. SCHNAPPER:

Q. To return to that hypothetical, I take it that it is your testimony that just by splitting up the Hasidic community you would be alienating and discouraging Hasidic registration and voting and that it would have the same effect on Blacks and Puerto Ricans? A. Well, I would not be sitting here and testifying if they were dividing up the Black community, that is dividing it equally as they have done the Hasidic area. I happen to personally represent a district that has 62 percent Black and 38 percent White, and in the past I have represented a Black district where this specific thing has happened. I think it is a wrong, it is a wrong no matter who is involved.

Q. Now if the legislature were to find that that kind of a wrong was being committed, what can they do about it? A. The Legislature?

Q. From your judgment what would be reasonable if [79] they find the Black community has been split in half, could they put it back together? A. I think they have a moral and legal duty to correct any wrong.

For example, my understanding is specifically on the 57th Assembly District that there is an apartment house at 75 Henry Street at Cadman Plaza which has approximately 1200 people in it, which was erroneously divided in half because the wrong maps were used to bring about the district.

Now, if we have the power to correct something that is erroneously done, then I hope that the legislature has the

power, has the power to correct something that was purposely done.

Q. Well now, I take it that you are aware that Mr. Pottinger issued a ruling as to the district lines: You are familiar with that letter? A. Yes, I am.

Q. Now, with regard to the various district lines, you suggested that the basic change with regard to the 57th Assembly District was that certain Hasidic voters had been put in the 56th Assembly District; is that correct? A. That is correct.

Q. Now— [80] A. I should say gerrymandered in.

Q. Well, let us—

THE COURT: Counsel, this is the usual time for adjournment, for recess.

If there is no objection we will now recess until 2:15.

MR. SCHNAPPER: Fine.

THE COURT: All right, a quarter after two.

(At this point a recess was taken until a quarter after two.)

[81] CROSS EXAMINATION CONTINUED

BY MR. SCHNAPPER:

THE CLERK: Mr. Gerges, please. You are previously sworn. Please resume the stand.

Q. Mr. Gerges, I believe on direct testimony we—before we broke for lunch you testified that the present assembly lines had been arrived at primarily by switching a substantial number of whites, mostly Hassidim, out of the 57th into the 56th and taking blacks from the 56th and moving them over into the 57th? Is that essentially correct? A. Yes.

Q. Now, could—I should say, specifically Hassidim were taken. In other words, there are other parts of the District that may have whites in it. That portion was not changed. The Hassidim, I understand that. Now, could you conceive of a way of drawing the boundary between the 56th and

the 57th Districts so that the Hassidim were all in the same district but both the districts had more than 65 per cent non-white population? A. I do not have enough sufficient knowledge. When you are talking about percentage-wise, I wouldn't know exactly. It may come out to 63.4 or

Q. Let me suggest a typical hypothesis. I remember the proposal you had made to the Legislature was that Hassidim [82] —by way of background, my understanding is the 57th District under the new lines is about 65 per cent non-white and the 56th is something like—something in the 80's? A. I think it's 64.

Q. Sixty-four, and the other one is something in the 80's. The exact numbers are in the record.

Now, you had suggested to the legislature that the Hassidim in the 56th be moved back to 57th which would have lowered 57 down towards the lower end of the 60's. Couldn't one just as easily have met your criteria by moving the Hassidim into the 57th over into the 56th? And you would have been happy if that had been done? That would have put them in the same district? A. I don't believe so. I don't believe that the percentage-wise would have come out the same. I think—for example, I think the—the 56th is 85 or 90 per cent. Something in that area. I don't think percentage-wise that could have been done.

Q. It wouldn't have become 65. The point is, if you moved all those Hassidim in, it would have been more than 65 per cent? Because it's so heavily black now? A. Well, I happen to personally disagree with those figures because I think those were 1970 census tracts, if I recall correctly, and I don't think that as of today, that those are correct figures. [83] Q. You think the area is even more non-white than it is in those statistics? A. I don't know which—one way or another. There are so many—in the surrounding area, there are so many changes that I am not exactly sure personally just what it is as of today. I think it's immaterial really.

Q. Now, do I understand you correctly if you say that sometime prior to the actual enactment of the 74 lines, you had one or more meetings with Mr. Scolaro? A. Yes.

Q. How many meetings were there? A. It was going on all day long.

Q. I see. A. Might have been many.

Q. Is this the same period of time, two days that you were in Albany, while the legislature was in session? A. Yes.

Q. Did you speak with members of the legislature at that time, aside from talking with Mr. Scolaro? Did you also make your views known to the members of the legislature? A. A few of them.

Q. A few of them.

I take it, you didn't succeed? A. Well, I think, I'll put it—I think that what—what was occurring was that there seemed to be [84] interference with the Justice Department as to what the legislators wanted to do.

Q. I see. Okay. Now one final question.

THE COURT: Which Justice Department are you referring to?

THE WITNESS: The Federal Justice Department.

MR. SCHNAPPER: The State Department, I believe, is called the Department of Law, if I am correct. Is that correct?

MR. ZUCKERMAN: That's correct.

Q. One final question. With regard to the—the decision of Mr. Potinger, when he ruled on the 1972 lines and held that they were discriminatory, did you prior to his decision send him any memoranda or letter urging that the 1972 lines be approved and that they were not discriminatory? A. No, I did not.

MR. SCHNAPPER: Thank you.

REDIRECT EXAMINATION

BY MR. LEWIN:

Q. Mr. Gerges, just on that last series of questions that Mr. Schnapper asked you. From your discussions with the

legislators, was it your understanding that they wanted to keep the 1972 lines? A. Yes.

Q. And the only reason that they changed and moved [85] —and split up the Hassidic community was because they were directed to do so by the Federal Department of Justice? A. That's what they seemed to indicate to me.

Q. And that's what Mr. Scolaro indicated when he talked to you? A. That's correct. He was trying to—he was trying to, I think—and he had never told me but I think he was trying to keep the Hassidim together but he felt he was being directed by Washington to break them up. That seemed to be the indication.

Q. Now, you talked in—I think you spoke this morning in your cross examination, in answer to Mr. Schnapper's question about the harm, if a black community is split up. Do you know of any black community in the County of Kings that is split up the way the Hassidic community would be split up by these lines? A. Absolutely not.

Q. Is there any comparable harm to any black community that you know of by being split up in this way? A. No, I have—I have read the brief of the NAACP in some other cases that they have, and I have never in my experience ever seen an injustice specifically where a group of people purposely were cut up in half, and I would say there is nothing comparable to that in any area, that I have knowledge of, in any event.

[86] Q. I think there was some cross examination into the area of whether there was racial, past racial gerrymandering in your opinion. Do you know of any particular instance that you examined in the history of division of political lines in the State of New York where there was deliberate gerrymandering in order to keep black communities in a specific election district or assembly district or senate district? A. No, I do not.

Q. In your view, would the lines drawn for the assembly district and the senate district that are involved in this case

correct any past injustice done to the black community?
 A. Absolutely not. I would say that the—the irreparable harm that would be done to the Hassidic community, in which I have seen on a first hand basis, is that—is that a person would say to me, “Why should I register if I am going to be divided and the law is going to direct me to be divided? What is my purpose in registering?”

Q. People have said that to you? A. Absolutely. People have refused to sign petitions saying that if justice works in that manner, we don’t want to be involved in the political voting. If this is what they’re doing to us purposely.

Someone said to me, which I think affected me more than anything anyone said, was they couldn’t do it to us in [87] the concentration camps and they are trying to do it to us here. That is the emotional type of think that is going on within that district.

Q. In your familiarity with the black community, would an election, even assuming that there were some malapportionment in the black community, would a single election in the black community involving malapportionment of that kind have that kind of effect? A. I don’t believe so.

Q. Would a single election in which the Hassidic community is divided up in that way have a lasting effect? A. Absolutely.

Q. Would that be cured by a change two years later? A. Well, once you destroy a community that has taken so long to build up, it would be impossible to restore it to where it was beforehand.

CROSS EXAMINATION

By Mr. McGovern:

Q. Mr. Gerges, would you say that if the present lines were allowed to stand, there would be a substantial infringement upon the elective franchise of the members of this community? A. Yes.

Q. Would you say that it would be tantamount to a deprivation of their constitutional rights? A. Yes.

[88] Mr. McGovern: Thank you.

THE COURT: Is that all of this witness?

Mr. Schnapper: Just one question, Your Honor.

RECROSS EXAMINATION

By Mr. Schnapper:

Q. Mr. Gerges, did Mr. J. Stanley Pottinger, the Assistant Attorney General of the United States, acting pursuant to the Voting Rights Act, rule on April 1st of this year that the 1972 district lines have the effect which is discriminating on the basis of race? A. Well, I would say one would have to reread the decision. I’ll not interpret his decision.

Mr. Schnapper: Thank you.

THE COURT: What statute gives the Department of Justice the right to do this?

Mr. Zuckerman: It’s Title 42, United States Code, 1973 (c).

THE COURT: Give me that again?

Mr. Zuckerman: Title 42, United States Code, Section 1973(c).

THE COURT: What is that section?

Mr. Zuckerman: 1973(c).

THE COURT: What’s the voting?

Mr. Zuckerman: That’s the key provision for it.

THE COURT: That’s quite an extensive statute. [89] I’ve read it a few times.

Mr. Zuckerman: Yes.

Mr. Lewin: Of course, our argument, Your Honor, is that it does not give the Attorney General the authority to do what he did in this case, on the standards that they applied in this case.

THE WITNESS: Am I excused, Your Honor?

THE COURT: Are you through with this witness?

Mr. Lewin: Yes.

THE COURT: All right. You may step down.
[90] MR. LEWIN: Rabbi Stauber.

Chaim M. Stauber

having been first duly affirmed by the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEWIN:

Q. It's Rabbi Stauber? A. Yes.

Q. Rabbi Stauber, how are you employed? A. I'm the director of the National Committee of Orthodox Jewish Communities and editor of Der Yid, Yiddish language weekly newspaper, catering mostly to Orthodox and Hassidic Jewish communities.

Q. The newspaper you edit, Der Yid, is that—how often is it published? A. Weekly.

Q. And is it the main organ of dissemination of news within the Hassidic community in Williamsburg? A. I believe it is.

Q. How long have you held that position? A. As editor, for two years.

Q. Were you involved with it prior to that time? A. Yes, sir.

Q. Well, in what way? A. As a writer and contributor.

[91] Q. How long have you lived in Williamsburg, the Hassidic community? A. Since 1957.

Q. In your capacity as editor of the newspaper and the prior positions you held, have you become familiar with the community and its opinions? A. Yes.

Q. That's part of your job; isn't it? A. Yes.

Q. Does the newspaper itself express editorial views on political issues? A. Yes, it does.

Q. Are those views generally reflective of the views of the Hassidic community of Williamsburg? A. Yes.

Q. Has it at times expressed support of candidates in elections? A. Yes.

Q. Just turning to that subject for a moment. Has the history of support given by the newspaper in the past been one of support based on racial or religious lines? A. No.

Q. Has the newspaper supported other than Jewish candidates? [92] A. Yes, it has.

Q. Have you any illustrations? A. Oh, yes, quite a few.

First of all, we have endorsed candidates in many areas, other than Williamsburg.

In Williamsburg itself I remember having endorsed a gentleman by the name of Mike Hernandez, a Puerto Rican.

The names that have been mentioned here before, Theodora Martinez, co-leader, John Rooney, of course, is the well-known case. Vita Batista, for instance, we have endorsed as—I believe he ran for—he had a Jewish opponent.

We have endorsed, for instance, Emanuel Seller against Elizabeth Holtzman. There are many cases. I can't recall all of them, but we most certainly never considered religion nor race nor color nor creed an issue when it came to endorsing candidates.

Q. Has it been your experience in discussions with members of the community that the Hassidic community of Williamsburg generally follows the endorsements of the newspaper in terms of their actual voting practices? A. Well, my answer to that would be that I am not only aware of the community. I happen to live in the community and I've been very active in the Williamsburg community ever since 1957.

[93] The community in Williamsburg follows the leadership of the paper, as well as the leaders of the community. It's a cohesive, close knit community, bound by common cultural, religious and social bounds.

Q. Now, with regard to that community, could you describe that in general terms also, as far as its attitude towards the outside secular world is concerned? A. Yes. Historically, Hassidic Jews have no place in politics. I think it would be appropriate for the record to first define the term "Hassidim."

Q. All right, why don't you do that? That's a good question. Something we've taken for granted, but please do that.

A. Hassidim is plural for the term Hasid, singular which means pious.

The word chesed in Hebrew is a term describing benevolence, charity and piety as well.

I think that the Hassidic Jews are no different than other co-religionists, with the exception of being very close knit, trying to help one another and trying to contribute to one another in whatever way possible.

Now, then, because of our unique and conspicuous appearance—we have been very much discriminated against in the past and it's ironic, by the way, that we [94] are being considered white, you know, included in the majority at a time when we know that if there is such a thing as bigotry and discrimination, we are the ones to suffer.

The Hassidic community historically has been excluded from many, many social, cultural and other common advances and privileges that the average American citizen enjoys.

THE COURT: How long has your group been coming to the Williamsburg area?

THE WITNESS: Your Honor, the Williamsburg community has been since the turn of the century a Jewish community.

THE COURT: I am speaking of your group.

THE WITNESS: The group, the Hassidic community has started to snowball, so to speak, right after the Second World War when refugees, as pointed out before—and I don't want to get into that issue again—but it was mostly refugees that came from Europe, who have started to really nestle in the community and it—if—I think it should be noteworthy at this point that the community has gone through many trials and tribulations.

Williamsburg, the Jewish part of Williamsburg, used to extend far beyond its present boundaries. I myself per-

sonally used to live in the 56th Assembly— [95] actually it used to be 58th Assembly District on South 5th Street, and there used to be a very large Jewish Community all the way down to Willowby Avenue.

Somehow, for reasons beyond our control, because of the delapidation and other natural problems confronting this City, at large, we have been squeezed together little by little, so that at present we are taking up a very minute and small part of Williamsburg, bounded by—I think the entire area consists of something like 20 or so square blocks.

Q. There has been some testimony here that the population, the total population is in the neighborhood of about 30,000; is that right? A. That is an approximate figure that we have been—

Q. And the lines that have been drawn for purposes of assembling Senate district is somewhat different but do they approximately divide that voting—that actual population in what, in half? A. It's about a bull's eye, right on the heart.

Q. Now, I think you were telling us, giving us that background information, as introduction to telling us what the Hassidic community—how the Hassidic community today views itself vis a vis the outside world, or views the [96] outside world? A. Right. We have been made to suffer in the past and it was only by sheer necessity that we realized after awhile the only way we can fight for survival is by joining the democratic process by an orderly fashion, a democratic fashion.

We don't believe in vigilantes and we don't believe in fighting in order to bring to light our problems and our cause and, therefore, we found that the only orderly way to get something done is by joining the democratic process of registering to vote, seeing to it that people fully participate in their franchise as American citizens and I believe that we have been quite successful, considering the reluc-

tance on the part of the Hassidic Jewish community in the past.

However, I might add, and I think it's a very important point, what this reapportionment thing has caused, and I don't know how many people are aware of this from my own community, and I as editor of the paper, was told by many people, in letters and writing as well as by telephone, that there are some people that believe that somebody in Albany wanted to get even with the Hassidic community for really having the guts and having the clout to be a considerable force and factor in the political life of the City.

Because of the publicity it somehow backfired [97] and some people feel that we are simply being penalized for taking a stance in politics, for not knowing our place, so to speak, remaining in Synagogues, instead of coming out and really turning out the vote.

Q. So what has been the reaction to that? A. The reaction, naturally, is that, you see, we told you so. In other words, those—you have to remember that the community consists also of younger as well as older and actually there are very few in the community who are middle aged because, unfortunately, most of the older generation has lost families in Europe. They came here widowed, most of them remarried. So you have either the very old or the very young.

And the older ones still have problems shedding the persecution complex of Europe, always felt that our place was never in society, we really have to continue with the self-imposed exile of remaining in a ghetto, of not joining the mainstream. Not even in terms of political action.

The younger generation, being imbued by a sense of freedom and greater equality for all, felt that why sit around and just watch the trains go by without taking any action, without really doing something about it.

After all, you see the way communities have been uprooted all around you and here we are trying to stabilize

the community and try to dig in at a time when others [98] ran away.

Now, these two forces have been opposing—

Q. Could you stop at that point. You say, "Dig in when others ran away."

Is the reason mentioned before that the Jewish community occupied a larger area than that which it now does, is the reason that it occupies that smaller area now the fact that many who lived there left because there was a heavy proportion of blacks, heavy black influx so far as residences? A. Not necessarily. As a matter of fact, I think it was mentioned here before, and this is the irony of the problem, you know, the Brooklyn Queens Expressway, for instance, has uprooted I think an area of something like eight square blocks in order to make way for this monstrosity we know as the Brooklyn Queens Expressway.

Now, we have had public housing projects built, without giving any thought as to what happens to those families who are being displaced, in order to make room for the public housing projects.

And also you have, as I said before, the natural problems that face many other communities throughout the City and we are no exception. The crime problem, the poverty problem. I mean, the physical appearance of any given community, and Williamsburg is no exception.

[99] Those, of course, as I said before, when your Honor asked about the history of the Jewish community in Williamsburg, they used to be a white and even Jewish community, modern Orthodox Jewish community or even conservative or reformed. Those people who are financially better off, naturally they looked for better surroundings and better environment to live in.

Q. But you remarried? The Hassidic community remained while the others fled? A. Right.

Q. That area? A. Right.

Q. And now you are saying what is left of that community is going to be divided in half by the lines between the Senate and Assembly districts? A. Right.

Q. What in your view would be the effect of those Senate and Assembly districts remaining on the books and being used for this election, if it is ultimately determined that they are unlawful? A. I think my answer to that would be, we are already racing against time. I think it's already the 11th hour.

As far as I see it, I think most of the [100] damage has already been done in terms of this devastating blow. The morale has sagged to an all time low. The people just feel that all these politicians, with all due respect, that come to us before election time, with all the rosy promises, don't live up to them. Not even when it comes to a survival of a community.

The feeling is that we have been had, that the politicians in Albany just didn't give a damn as to what happens to a Jewish community, so why come out again and vote for these very people or any other. The politicians just won't stand up and be counted when they are most needed.

Q. Can this be cured, if there is a Court order which puts the district back together again? A. I think that this is the only solution and I think that this is a very historic moment. I think that the only way this irreparable damage could be somewhat cured is by drastic action which would prove that there is justice after all, that somebody at least realizes that this community has been damaged and therefore comes to our aid and assistance, because, as I said, the morale at the present time is really at an all time low.

MR. LEWIN: Thank you.

[101] CROSS EXAMINATION

By MR. SCHNAPPER:

Q. Rabbi, is it Stabler? Stauber? I'm sorry.

Rabbi Stauber, I might start with some questions about your newspaper. I take it that you testified that the newspaper expresses the views of the Hassidic community, particularly in Williamsburgh; is that correct? A. Right.

Q. Has the newspaper urged the people not to register to vote because of the new district lines? A. Contrary to that, Mr. Schnapper, I can show you the latest two editions which naturally would be most reflective and, as a matter of fact, we have urged people that the only way we could get even is by increasing our voter registration and telling them that the only way we could save this community is by proving that, you know, we are not going to take this lying down and we are still in the community to stay and to remain.

In other words, we are trying to naturally tell the people, "Don't let it get at you."

Q. I take it from what you said, if the community is persuaded by your argument, they may, out of outrage at the new lines, register in greater numbers than they have in the past? If you are persuasive? I am perhaps— A. Mr. Schnapper, if I may answer to that, it is [102] just by— what it amounts to is by telling a person, "If you will be blinded in one eye, you will see better with the one remaining."

Q. Okay, I'm not going to fight you proverb for proverb.

With regard to the—I take it not only have you taken that position on registration but you have not urged the people not to vote? A. We most certainly have not.

Q. Now, is it your intention, because of these new lines, to refuse to endorse candidates in the Williamsburgh area? A. Well, at this point I think it would be presumptuous to assume anything. We are still under the terrible shock and I myself am overwhelmed. I've been in this from the very beginning, and if I may state for a moment, Mr. Schnapper, it's amazing that NAACP has seen fit to join in this case as an amicus curie on the side of the defendants and I think what you are alluding to by your line of questioning is that you are actually the defendant yourself or the NAACP.

I think it would be interesting for the record to point out that when I called on June 29th, that Wednesday, when the state legislature was about to act on—

Q. May 29th, I think? [103] A. May 29th. I called Mr. Pottinger, Assistant Attorney General, J. Stanley Pottinger's office, and I was directed by him to speak to a gentleman by the name of James Turner and I had a very lengthy conversation with him over the phone, and Mr. Turner told me that it was only because of Mr. Schnapper, by NAACP, that they somehow have seen fit.

I asked him specifically and deliberately, was there any mention about the Hassidic community being sacrificed on the altar of so-called justice? And he said, "Well, it was mentioned vaguely," but there was nothing we could do because he told me that the whole thing was brought about because of the suit of the NAACP and he was trying to convince me that they never mandated any percentage in the first place, that it was only an effort to increase minority representation but not at the expense of any other community.

As a matter of fact, Mr. Turner further pointed out to me that they will most certainly be alert to this objection on the part of the Hassidic community and they'll take it into consideration.

Now to my knowledge, when I spoke to members of the joint legislative committee and to others in Albany, they were trying to shift the blame back into the Justice Department.

Now, we were just being played ball with and we had a very short period of time, as you know, because of the holiday [104] mentioned before, so that in that span of eight hours, we were just about able to convince ourselves that there was some moving force, and obviously it's the end of NAACP, which amazes me because traditionally speaking, not only have we always in our newspaper, for instance, supported the causes of minority groups, but I think, for the record, it might be worth while to point out that Mr. Roy Wilkins has written a column in the New York Post after the election of John Rooney and pointed out the Hassidic community as an example to be followed by

NAACP, of cohesiveness, of joining forces for the benefit of the community, without looking to race, color or creed, being practical in terms of political reality and therefore, he suggested that the NAACP following the same procedure, not looking at race, color or creed, but as to the candidate, the most qualified candidate, beneficial to the given community.

Q. I hope I've come up with a question that will prompt a slightly shorter answer.

I take it that what you object to—that the harm that you feel the Hassidic community has suffered by these new lines, it has occurred because the Hassidic community is split in half; is that correct? A. Right.

Q. It's not because part of all of the Hassidic community may be in a district that has a non-white majority? [105] You don't object to being in a district of non-white majority? A. No, we don't.

Q. So that as long as—I take it that that is why, for example, you don't feel that you have been harmed by the Congressional lines which leave you in the same district? A. We at this point don't know what to feel because somehow, you know, it's ironic. We just don't know. Is the NAACP our friend or our enemy? We are bewildered. We really don't know.

As a matter of fact, by your line of questioning, we are being convinced that you are against us, and there is no reason why we—we went to great pains in the news media to point out that this is neither a racial nor a religious issue.

Now, I don't understand why the NAACP and you, Mr. Schnapper, should have a vested interest in turning this into a racial issue at a time when we are specifically and deliberately emphasizing time and again that this is a question of a community, happening to be a Jewish community, Hassidic community, but it's a question of the community being split in the heart, in order to achieve certain racial quotas, which we don't understand in the first place.

Now, you asking me, if we object. We have been, I think—it has been pointed out time and again, that we have always been a minority within minorities. Our districts have always consisted of a comfortable majority of minority groups. [106] We never objected. We have always joined forces with them. We have worked as a coalition with other minority groups. This is a matter of record.

We sit on boards together. We work together.

Now, you, Mr. Schnapper, should know about this. I mean, who else would know, that the Hassidic community in Williamsburgh never discriminates against any other.

As a matter of fact, we were the only ones, as I said before, to work hand in hand to stabilize this community.

So therefore, I don't see why you are questioning me in terms of our objection to minority groups. We most certainly do not. We have pointed out here that we have endorsed the candidates regardless of race, color or creed.

Q. I understand. If I could just ask you one final question.

Did you—as you are aware, the Attorney General issued this ruling on April 1st, invalidating the 1972 district lines. Did you, in connection with his consideration of those lines, before April 1st, did you send the Attorney General any letters or memoranda personally urging approval of the 1972 lines or commenting on them in any way? A. No. I personally was not even aware of that ruling.

Mr. SCHNAPPER: Thank you.

[107] REDIRECT EXAMINATION

By Mr. LEWIN:

Q. Did you have any reason to send any letters urging approval of the Attorney General? A. No.

Q. Rabbi Stauber, was there at that point the slightest expectation in your mind that no matter what the Attorney General would do, the Hassidic community of Williamsburgh would remain intact, in any reapportionment? A. There was never any doubt that a voting rights act would

be used against the minority group. It was inconceivable to us that they were trying to accomplish something at the expense of creating many other injustices.

I mean, it just doesn't make any sense.

Q. So you had no particular concern over the claims that were being made attacking the 1972 lines, insofar as the Hassidic community was concerned? A. No.

Q. You had no reason to be for it or against it, other than the fact that the Hassidic community was being kept together in the assembly district where it had previously been, substantially? A. Right.

Q. And in the senate district substantially, where it has previously been? [108] A. Right.

Mr. LEWIN: That's all.

The COURT: Anything else of this witness?

All right. You may step down.

[109] Mr. LEWIN: The Plaintiffs call Mr. Lefkowitz.

Leopold Lefkowitz

called as a witness on behalf of the plaintiff, having been duly sworn by His Honor, Judge Bruchhausen, testified as follows:

DIRECT EXAMINATION

By Mr. LEWIN:

Q. Mr. Lefkowitz, you are a plaintiff in this action? A. Yes, sir.

Q. And where do you reside? A. I reside at 85 Taylor Street, Apartment 8D, Brooklyn, 12111.

Q. Under the lines that are drawn for the new senate and assembly districts, would you be in the 57th or 56th? A. 56th, I think—57th, I am sorry.

Q. 57th? A. I am mixed up already.

Q. Do you occupy or have you occupied any position on any governmental body? A. Well, I don't know what would be your definition of a governmental body—

Q. An elected office? [110] A. Yes, I have been elected to the Williamsburg Community Corporation, I am active there for the last seven years, I have been elected and I am the secretary of the local school board, District 14, and those are the two elective offices that I have held.

Q. School Board District 14, does that coincide with any particular assembly or senate line? A. No, it is just a school district line, it is a different line altogether.

Q. Does the reapportionment as affected by the 1974 Act affect you in any way in terms of political, your own political possibilities? A. Yes, it affects me personally politically.

Q. How does it do that? A. Well, when I decided, when I put forward my candidacy—let's go a little back and give you some background history:

As I told you before, I am seven years on the Williamsburg Community Corporation, and that is a corporation where the Jewish members are outnumbered by three to one or even four to one. We have there Puerto Ricans, Blacks, Italians, Polish, whatever, Irish, whatever. We work there together, and last year when the School Board elections came up petitions were circulated and my name was put forward and [111] I accepted it only on the basis that other than Hasidic or Jewish or whites will support me. I had the full support from the entire Williamsburgh Community Corporation, I had Black people out campaigning for me, I had Puerto Rican people out campaigning for me.

And coming to the Community School Board, I am there as the only Hasidic Jew, we have Puerto Ricans, we have their Blacks, we have Italians, Polish and Irish, and we work very nicely together because the only thing that we have in mind is what is good for the children of our district.

Now having had that experience I was contemplating personally to run for elective office, and Blacks and Puerto Ricans promise me support.

I cannot have that audacity in asking now for their support when I don't have the grass-roots support of my own

people because my own district is split in two. If I had the full support of the Hasidic people, I am sure that I could put up a viable campaign, whether I won or lost, and if I lost I would have lost by a small margin and it would be worthwhile for me politically speaking.

Q. Is it your view in addition that the lines that are drawn will encourage voting on the basis of race? A. It is my—

Q. Is it your view that the lines that are drawn [112] will encourage voting on the basis of race, the lines that have been presently drawn? A. I think that this will bring out, especially after Mr. Schnapper's position here, this will bring out the racial issue, which we didn't, which we were fortunate in not having it in our community, and I am very much afraid that this will become a racial issue now.

Q. Because of the lines which have been drawn on this basis? A. Yes, and because the lines were drawn on this basis on the recommendation from Mr. Schnapper.

Q. Well—thank you.

CROSS-EXAMINATION

BY MR. SCHNAPPER:

Q. Mr. Lefkowitz, I take it that the harm that will occur in terms of your political aspirations is harm caused by these lines because the Williamsburgh Community has been split in half; is that correct? A. That is correct.

Q. If the community were all in one district, even though it might have a majority of Blacks, that would be okay with you? A. No objection at all.

Q. Now Mr. Lewin also raised the question whether [113] the present lines might result in racial polarization voting, and am I correct in assuming that you think that the new lines may result in racial polarization because they split the Williamsburgh community in half; is that the problem? A. No, that wouldn't only be the problem, so to speak, the background of it, what I think the real harm comes from is

to emphasize and to make it a law that it has to be 65 or over other than White, that brings out the racial issue.

In other words, my conception of the Bill of Rights is that a district should be drawn for the community and we should be color blind and to who is the candidate or who gets elected, in other words we should be color blind. What you are creating is a monster. What you are saying is we shouldn't be color blind, we should look whether it is a Black or a Puerto Rican. It is a racial issue and that is unconstitutional, in my opinion.

Q. With regard to the school district of which you are a board member, is that district 14, did I get it right? A. Yes, sir.

Q. Is all of the Williamsburgh community in that single district or are you split? A. It is all in the same district.

Q. One final question with regard to the decision of Mr. Pottinger, the one of April 1st, you are familiar with [114] that? A. Yes.

Q. Had you prior to that decision sent any letters or memoranda personally to the Attorney General urging him to approve the 1972 district lines? A. No, we did not go and we wouldn't have done anything had you not insisted to have at least 65 or more percent of colored or of minority people.

THE COURT: I take it the 1972 lines are the lines before the change.

MR. SCHNAPPER: That is right.

Thank you.

THE COURT: Any further questions or examination of this witness?

MR. ZUCKERMAN: No, your Honor.

THE COURT: All right, you may step down.

THE WITNESS: Thank you.

(The witness was excused.)

[115] MR. LEWIN: We will call Richard S. Scolara.

Richard S. Scolara

called as a witness on behalf of the plaintiffs, having been duly sworn by His Honor, Judge Bruchhausen, testified as follows:

DIRECT EXAMINATION

BY MR. LEWIN:

Q. Mr. Scolaro, how are you employed? A. I am an Attorney and a member of a law firm in Syracuse.

As relates to these proceedings, I am the Executive Director of the Joint Legislature Committee on Reapportionment.

Q. That is the New York State Joint Legislative Committee on Reapportionment? A. Excuse me, the name has just been changed to the Joint Committee, I think they have dropped the word "legislature."

THE COURT: Is this a public appointment?

THE WITNESS: It is an appointment by the members of the legislature who are members of the committee.

THE COURT: I see, it is a committee of the legislature.

[116] BY MR. LEWIN:

Q. And what is the function of that body? A. The principal function on a staff level is to recommend apportionment plans to members of the committee who are legislators and for them to recommend to the full legislature a plan of reapportionment for passage by that legislative body.

Q. The committee has elected you to the staff level, how many members of the legislature are members of that committee? A. There are ten.

Q. And they appoint a staff that does the spade work, the technical work; is that correct? A. That is right.

Q. How long have you been occupying the capacity that you have just testified about? A. I have been involved in

reapportionment since it started in New York State in 1964, that is with this committee in some capacity—

THE COURT: 1964, you say?

THE WITNESS: 1964, I have been with it since 1964.

A. (Continuing) I have been through various positions of Assistant Counsel, Counsel and most recently Executive [117] Director, which I believe hasn't been since 1968 or '69.

Q. And had you had any experience with apportionment prior to 1964? A. No, sir.

Q. Have you been involved in the drafting or evaluation of all reapportionment plans since that time? A. Yes, sir, I have.

Q. What about your capacity with regard to the judicially directed reapportionment under the Orans case in the New York Court of Appeals? A. The Judicial Commission employed the staff of the Joint Legislative Committee, or rather more accurately during that period of time I worked with the Judicial Commission.

Q. So you were involved in drawing up that plan as to the reapportionment in 1966, was it, that is when it was submitted and approved? A. I have been involved with any reapportionment plan that has come into existence that had been prepared since 1964, that is that had been enacted.

Q. And you were involved in as well the reapportionment plan that resulted in the legislation which is an issue in this case? A. Yes, sir.

[118] MR. LEWIN: No just for the record, I think, your Honor, I ought to introduce at this time—well, we did not have these attached to our complaint, but I would like to have this marked as a Plaintiff's Exhibit—

THE COURT: This is for identification?

MR. LEWIN: We will make it for identification.

We can make it a complete exhibit, I suppose.

MR. ZUCKERMAN: What is this?

MR. LEWIN: It is just the bill.

THE CLERK: Do you want these as one or three?

MR. LEWIN: You can make them collectively one exhibit.

THE CLERK: Five separate acts on reapportionment marked for identification as Plaintiff's Exhibit 1.

BY MR. LEWIN:

Q. I show you Plaintiff's 1 for identification.

Now, that is five separate acts, and the ones that are marked S-1, S-2 and S-3, do they comprise the proposals that were submitted by the Joint Legislative Committee on Reapportionment in May of 1974 to the New York Legislature? A. Yes, they do.

Q. And the ones that are marked S-6 and S-11, A-6 [119] and A-11, do they comprise analysis that were made as to those acts.

THE COURT: Let me ask you, the exhibit numbers that you claim was the offering by his Committee, what is that number?

MR. LEWIN: Well, they are all a part of Plaintiff's Exhibit 1, your Honor, there are the first three bills of Plaintiff's Exhibit 1—

THE WITNESS: I can explain all of this.

MR. LEWIN: Why don't you explain those things.

THE WITNESS: We originally—

THE COURT: Is that shown on the paper, who submitted it.

THE WITNESS: These are the bills, all of which were enacted. The original bill, S-1 A-1 bills with—

THE COURT: I'm trying to find out which ones were recommended by your group.

THE WITNESS: All of them.

THE COURT: All of them, I see.

THE WITNESS: At one point S-1 A-1—well, it was the introduction dealing with modifying the assembly and senate lines.

S-2 A-2 dealt strictly with the Congressional Districts, modifying the previously existing [120] Congressional District.

S-3 A-3 is what we consider to be a chapter amendment modifying the original recommendation for Senate lines.

THE COURT: Were those modifications—

THE WITNESS: They were all—

THE COURT: (Continuing) —offered by your group.

THE WITNESS: The modifications were brought to the attention of the Committee by members of the Legislative Committee; the Committee then did the work and submitted back groups of proposed bills to the Legislative Committee, and then the Legislative Committee introduced those bills to the Committee on Rules.

THE COURT: What date was this?

THE WITNESS: This was May the 29th, they were all done on May 29th.

A. (Continuing) Now S-6 A-6 modified the S-1 dealing with the assembly district lines.

S-11 A-11 was a modification of the senate district lines and was employed by us solely because of errors that were committed in the Fifth Senatorial District, and those errors had to be corrected and S-11 A-11 does [121] nothing more than correct that error.

Q. Do all of the bills that are together as Plaintiff's Exhibit 1, do they constitute the full 1974 modification to the earlier reapportionment in 1972, the 1972 reapportionment. A. Yes, I believe they do.

Q. And that is the packet of bills that was submitted to the Department of Justice on May 31, 1974, for approval? A. Yes, sir, it was.

MR. LEWIN: All right, we will offer that in evidence.

MR. ZUCKERMAN: No objection.

(Above documents marked as Plaintiff's Exhibit 1 in evidence, as of this date.)

[122] By MR. LEWIN:

Q. Now, directing your attention specifically—well, I would like to show you what has been deemed marked as Plaintiff's Exhibit 2 for identification which are three maps headed, "1974 Assembly"—I'm sorry, "1974 Borough of Brooklyn Assembly";

"1974 Borough of Brooklyn Senate";

"1974 Borough of Brooklyn Congress." A. I don't understand what the red markings are, I assume they are the Chapter Amendments.

Q. I think they are, we took the red markings off the copy that the Department of Justice had? A. Okay.

Q. The best we can trace them is that they are amendments to the chapters, the Chapter Amendments? A. That is correct.

The maps were prepared based on S-1 A-1, S-2 A-2, S-3 A-3 and submitted to all the members of the legislature.

The Chapter Amendments occurred subsequent to the publication of the maps and therefore the maps you submitted to me in the original print are not the final bill but modified by red lines over the black lines, and they would be the enactments.

[123] MR. LEWIN: May we have Plaintiff's Exhibit 2 for identification received in evidence.

THE COURT: All right, mark them.

THE CLERK: Map of the Assembly Districts received in evidence as Plaintiff's Exhibit 2.

Map of Senatorial Districts received in evidence as Plaintiff's Exhibit 2A.

Map of Congressional Districts received in evidence as Plaintiff's Exhibit 2B.

By MR. LEWIN:

Q. Now the area which we have been talking about in this litigation I think is one that you are familiar with: right, Mr. Scolaro? A. Yes sir, I am familiar with it in-

sofar as the Hasidic Community is concerned, I am familiar with where they reside.

Q. Since the time that you have been involved with reapportionment in New York State, that geographic area has been in the same senate and assembly districts? A. To the best of my recollection it has been in the Williamsburgh area.

Q. And for purposes of apportionment plans that you had occasion to draw up during those periods of time, did you and the members of the staff of the Joint Legislative [124] Committee consider it as a single unit that should not be divided up? A. It certainly was considered as a community in drawing the plans previously, and if I may have the opportunity of explaining a little how reapportionment has been done traditionally, that is prior to 1974, we have always considered the natural geographic boundary to be the rivers in the Brooklyn area and to the extent possible we have always tried to deal with the periphery initially and move in towards the center of the community.

THE COURT: Just in summary, is it your position through these exhibits that you wanted to retain the lines.

THE WITNESS: I am not sure what you mean, my position to retain the old lines?

THE COURT: Was it the position of your group to retain the old lines?

THE WITNESS: My group only functions to reapportion, we are the staff of the committee which is charged with the responsibility of reapportionment.

THE COURT: I'm just asking what your function was, what did you do; did you recommend any changes or did you substantially retain the old lines from 1972?

[125] THE WITNESS: At the request of the Department of Justice—at the request of the legislative leaders we as a staff attempted to defend the '72 lines with the Department of Justice and on various occasions we met with them in an attempt to defend those lines.

The defense was of no avail.

BY MR. LEWIN:

Q. In the history of your dealings with the problems of reapportionment in New York, has there ever been an occasion where your committee has deliberately racially gerrymandered a district? A. There was a proceeding in the State Court dealing with the question of racial gerrymandering the last time around and the Court found there was no evidence of racial gerrymandering at a state level, even though that issue was not presented to the Court in the same manner that this issue is being presented, but it was not found.

Q. It was never purposely racially to gerrymander any district? A. There was never any particular purpose to gerrymander racially.

Now I have heard three different definitions of gerrymandering today, I am not sure I ascribe to any of those definitions, but in my own definition I don't [126] believe that was the particular purpose, that is to racially discriminate against any particular group, any ethnic group.

Q. Now that series of bills and maps that you have before you was proposed by you and enacted to replace the 1972 reapportionment; is that right? A. Yes, sir.

Q. And which the Department of Justice found invalid? A. The '72 lines, yes, sir.

Q. The '72 lines? A. Yes.

Q. Those '72 lines were not drawn with any purpose to disenfranchise minority races, were they? A. The State Court I believe has found that to be true.

Q. And you argued that with the Department of Justice, at the meetings you had with them? A. Yes, in fact we argued specifically that Hasidic problem, I think that has been pointed to a certain degree, and Mr. Pottinger was not involved in that nor was Mr. Turner, he was not involved with any of those arguments, initially other staff people were and we specifically pointed out that because of the areas that they were [127] questioning as to the make-

up of the ethnic population, and this is what they were questioning, conceivably we told them we would have to divide up other groups that were traditionally known as minority ethnic groups in order to comply with the new request being made by the Department of Justice, and the question of the Hasidic Community was specifically raised.

Q. It was raised with the Department of Justice? A. Yes, sir.

Q. And what was the response you received from them? A. It is very difficult for me to be articulate on this because of a sort of—well, let me tell you their position, their position was this:

What you have got now is not good because the affect of what you have got is to discriminate racially against non-whites, and what they suggested is that the lines be amended so that in certain areas such as in Brooklyn you should consolidate the Black areas, that is put some additional Blacks into adjacent White areas in order to affect the possibility of greater Black representation in districts that are adjacent to those districts presently being represented by Blacks.

Now, that argument with respect to Brooklyn [128] was just the opposite of that in Manhattan. There they took the position that we had overdiluted the Black population and as a result we should attempt to take the Black populace out of the White areas and create more substantial majorities in the Black districts within Manhattan, and that particularly in the senate districts of Manhattan.

Q. Now, those were discussions that you had with the Department of Justice after April 1st of this year? A. The discussions started in the defense of the lines prior to their determination, and it resulted in two trips to Washington, one of which I think we were there for five or six hours and was strictly in an attempt to defend the '72 lines and which we considered to be appropriate apportionment and should not be modified.

[129] Q. So there were two meetings which you had prior to April 1st of 1947? A. There were at least two meetings, one in particular which was pretty much an all day meeting where we got into the nuts and bolts of the questions, going on a district by district basis and trying to defend each thing that we had done in 1972, and at that time, we were also considering the Bronx County in addition to Manhattan and Queens.

Q. You tried to defend the lines on criteria other than racial criteria? A. We attempted to defend the lines as being in compliance with the Voting Rights Act and we felt that they were in compliance with the Voting Rights Act and should not be modified.

Q. And you felt that they did not deprive anyone on account of race, creed or color? A. Yes, sir.

Q. And they were justified by other considerations in each instance such as nationality, geographic boundaries, community units, and what other factors? A. Well, pretty much as you have described it, we had always attempted to maintain a community of interest, the socio-economic community of interest or the [130] religious community of interest, and we always tried to have our principal lines run along main arterial lines or of any major arterial highway.

We have always attempted to comply and were trying to follow other district lines to the extent that we could, and that is relatively a shallow argument, because if you were to interpose certain criteria on the map, you would end up with a totally black map.

We have attempted, however, in the framework of the staff, to maintain existing cultural, socio-economic or ethnic groups in one district to the extent possible.

Q. Specifically, in discussing the matter of the racial distribution of a minority racial population, and I am directing your attention to Assembly District 57, was there any discussion of the percentage of the non-white population in Assembly District 57 under the 1972 Reappor-

tionment? A. Yes, sir, there was specific, and I think in the April 1st decision signed by Mr. Pottinger, the 57th District was one of the districts which were pointed out to be adjacent to a non-white area or a black-Puerto Rican area.

Q. It is a fact, is it not, that according to [131] the 1970 census, the 57 lines, the 57 assembly district lines meant that that district had a population, a non-white population of about 61.5 percent. A. That was our figure.

Now if I may, there was a great deal of discussion with respect to the public census figures, and in noticing some of the census publications around here, I think it should be pointed out that some of those figures are incorrect.

They were published prior to the time that the reworking with the people in the State of New York and our staff was done.

One of the problems that we had was that in the census form that was used by the Bureau of Census, the question of the Puerto Rican population was not clearly identified. It was set forth in those cases—well, the question was asked in such a manner that the members of the Puerto Rican community listed themselves as being whites without a challenge in any way, and I don't mean that in any invidious sense, and it was therefore necessary in dealing with the classification of white and non-white, to determine where the Puerto Ricans would fit into that type of category, white, non-white and three different formulas were employed, the formula that was accepted by [132] the Bureau of Census in dealing with them, and by the Justice Department, resulted in a finding that under the '70 lines, there would be 61.5 percent non-white population in the then 57th District.

Q. I believe we were at the point where you were testifying about the 61.5 population in the 57th Assembly District as it stood on the 1972 reorganization and you said that was an inadequate or was inadequate from the point of view of the department of Justice.

Is that right? A. Yes.

[133] Q. Now, after Mr. Pottinger's letter of April 1 of 1974, did you, first, asking you about yourself, did you form any opinion regarding the validity of the position taken by Mr. Pottinger of that letter? A. Yes. I thought his decision was unwarranted—

THE COURT: That gentleman was who?

Mr. LEWIN: Mr. Pottinger.

THE COURT: Who did he represent?

Mr. LEWIN: Department of Justice, Assistant Attorney General.

Q. You were saying? A. It was unwarranted, personally, as an individual and an attorney.

I thought his decision was unwarranted and was not in compliance with the statute.

Mr. SCHNAPPER: I don't know whether Mr. Lewin intends to continue this line of questioning, but I don't think this witness is here as an expert on the law.

THE COURT: Well, let us say he disagreed with him.

Mr. SCHNAPPER: I think we can voice our disagreements as lawyers but not as witnesses.

THE COURT: All right.

[134] Q. I was asking that as a preliminary to another question, Mr. Scolaro: Did you also canvas the views of the legislators who were members of the Joint Committee on Reapportionment regarding the validity of that legislation? A. I, personally, did not.

Q. Did the staff do that? A. No. That is not a staff function, and they have never been.

Q. Did the Joint Committee on Reapportionment ultimately, in a report, state what its view were regarding that decision? A. Yes.

Q. And were those views in accordance with the views that you have expressed here? A. Yes, sir. I believe substantially they were.

Mr. LEWIN: I show you what I will have marked as Plaintiffs exhibit 3.

THE CLERK: Special report of Joint Committee on Reapportionment marked Plaintiff's exhibit 3 for identification.

(So marked.)

Q. That report, plaintiff's exhibit number 3 was a report that you had a hand in? A. I prepared the report in its official draft, [135] yes, sir.

THE COURT: This is the report of what, your group? A. The interim report on Joint Committee on Reapportionment.

THE COURT: I am a little confused. Is that the Joint Committee of the Legislature?

MR. LEWIN: Yes, sir, on Reapportionment.

THE WITNESS: There are 10 members of this committee and I think it is important to point out that 8 members signed the reports and two did not.

This is not an executed copy.

The two people that did not sign this report were Senator Straub and Assemblyman Fortune.

Q. Senator Straub is Senator Chester Straub? A. Yes.

Q. He is a State Senator for the State Senatorial District in which the Hasidic community was located?

A. He is the State Senator from the Greenpoint area. Yes, sir.

Q. That included that part of the Williamsburg area?

A. I believe it did.

[136] Q. The reason he didn't sign it is that that reapportionment was doing away with his district.

Isn't that right? A. I really can't speak for him. I think personally he had the objection because his district was divided substantially. He did voice also, in a committee meeting that he felt that there should be more recognition given to what he defined his community of interests were then in his existing district.

Q. His failure to sign was not a disagreement with the legal judgment which you say you formed and apparently

8 members of the committee formed, that the Assistant Attorney General was wrong in his decision on the '72 reapportionment?

In other words, Mr. Straub was not, by refusing to sign that, saying that I disagree with you when you say that the Attorney General was wrong and should be taken to court? A. I really can't speak for him on that, but it is accurate to indicate that his principal criticism was the manner of districting.

MR. LEWIN: I offer this in evidence.

MR. SCHNAPPER: I don't know how long this is going to go on—

[137] THE COURT: I cannot hear you.

MR. SCHNAPPER: I want to object to this series of questions suggesting that the Court should consider on questions of law as a public opinion, and I don't see how the legal opinions of the members of legislature are relevant.

MR. LEWIN: If the members of legislature were strong-armed, as we submit they were, into changing these lines, by the fact that the Department of Justice was saying that you have got to change those lines, and the only reason they did not take the Attorney General to court was that there was no time, then I think that is relevant.

Moreover—

THE COURT: Objection overruled.

Proceed.

Q. Well—

MR. LEWIN: I offer this in evidence.

THE COURT: Any objection?

MR. ZUCKERMAN: No objection.

THE COURT: Mark it.

THE CLERK: Document previously marked as Plaintiff's exhibit 3 for identification now received in evidence.

[138] (So marked.)

Q. The report does say, the bottom of the page, page 2, on top of page 3, that the Joint Legislative Committee on Reorganization does not subscribe to the ruling of the Justice Department as expressed in the April 1 letter of the Assistant Attorney General Pottinger, the exigency of time require that new legislation be enacted to satisfy immediately the objectives of the Department of Justice and thereby permit an orderly, primary and general election to take place in New York and Kings County in 1974.

The necessary remedial legislation must be enacted in time to obtain Department of Justice approval prior to June 17, which is the first date at which designated petitions may be circulated for the 1974 primary elections.

Now, is it fair to say—

THE COURT: That primary election is in July?

MR. LEWIN: It is in September.

THE COURT: All right, September.

MR. LEWIN: September 10th.

Q. Is it fair to say that what this report essentially indicates is that the Joint Committee on Reorganization or reapportionment, is really forced to the wall by time, and that was the only reason that they [139] adopted these lines? A. It is clear that we were forced to the wall by reason of time.

I really cannot speak for the legislature on all the reasons they adopted these particular lines as against orders.

Q. Was there any consideration, though, after April 1 of 1974, in attempting to meet the Department of Justice standards?

Was there any consideration given to factors other than race? A. Yes, there was, and I think the succeeding paragraph on page 3 indicates that.

We attempted to effect compliance with the April 1 determination and still maintain compliance with our State Constitutional question with the compactness, black on the border, changing of as few districts as we considered

necessary in order to effect compliance, which we determined to be invalid.

All of those considerations were of great importance to us, however, as occurred previously, and we have had Federal and State criteria to follow, we did accept Federal criteria under the supremacy clause and it would be paramount and therefore to the extent that the [140] Justice Department determination was correct and we felt required to follow their criteria officially, and then attempt to apply Article 3 criterion, secondarily.

Q. Your first effort was to meet the standards that the Department of Justice laid down with regard to race? A. Yes.

Q. Now, specifically page 5 of that report says with regard to Kings County Senate, to overcome Justice Department objections, the committee has attempted to create three senate districts which contain substantial non-white majorities. That is what you were talking about when you said that was your first consideration to create three senate districts with substantial non-white majorities?

A. Yes. We did attempt to create three senatorial districts having substantial majorities of what the census bureau and Justice Department would consider non-white residents.

Q. Did you have any discussion with the Justice Department after April 1 of 1974, to determine what they meant by substantial non-white majorities? A. Yes.

Q. In person? A. Yes.

[141] Q. How many occasions? A. One very lengthy meeting in person and telephone calls and other representatives at my request from my staff did go to Washington on, I believe, one and possibly two other occasions.

We continued to supply data to them, voluminous amounts of data.

Q. There was—this was after April you continued to supply data? A. Yes.

Q. Did you also speak—Did you personally speak on the telephone with attorneys of the Department of Justice? A. Yes.

Q. On how many occasions? A. I cannot pinpoint that, but a sufficient number so that I came to the conclusion that I had learned everything I could possibly learn and had to go on with my task of getting these lines done before June 1, so that they could get the decision back to us by June 10th.

Q. Why did you think they could get a decision by June 10th? A. Because I was told of the substantial amount of material that we had supplied the Justice Department [142] with prior to April 1 which would fill two filing cabinets, I believe, with all data in absolute terms and percentage terms, and at one of my meetings with them, I indicated it was going to take us as a staff, X amount of days to get the work done before we presented it to the committee, and would that be sufficient for you to render a decision prior to June 17th.

While they would not guarantee us a specific date, they indicated, they anticipated they could finish their work once submitted to them, with an approximate estimate of—within approximately 10 days, and I asked them if we got the material in by June 1, could we have it back by June 10th with a decision.

They indicated they thought that would be probable and they still had statutory requirements and their own regulation requirements as to public hearings in notifying people who had objection, but they felt they would be familiar with the issues in those three counties to allow them to make a decision within 10 days.

That has not been the case.

They have not made a decision yet.

Q. And it is now June 20th?

Q. And it is now June 20th? A. Yes, and I called them frequently.

Q. In fact the information was arrived at on [143] May 31? A. It went down immediately after the Governor signed the bill.

Q. I was asking you whether you had discussions as to what constituted substantial non-white majorities.

Were you ever given a specific figure by the Department of Justice? A. No.

Q. Were there times in the course of your discussions with them when you proposed to them certain lines that would result in certain figures of non-white population, in particular districts? A. Yes.

We were very pressed for time at this point.

One of my principal reasons to go to Washington after the decision is that the letter does not say anything to be of a guideline to a staff.

I told them that you told us what we have got is bad. I said give us an indication of what would be good.

I suggested to them one thing that might be helpful was to give us what you considered to be a substantial non-white plurality that we might incorporate to [144] draw new lines.

They refused.

I suggested then the existing 57th District, 61.5 percent is a figure all parties agree upon and you determine that is not substantial by indicating that would be one district which could be improved by a greater number of non-majority whites and their indication, without statement, was that the 57th District was not sufficient to be classified as a non-white district.

I said how much higher do you have to go?

Is 70 percent all right?

They didn't say yes or no, but they indicated it is more in line with the way we think in order to effect the possibility of a minority candidate being elected within that district.

I suggested 65 percent. It came out at that time that is a figure used by the NAACP in numerous briefs and other documents.

I got the feeling, and I cannot vouch for this as a matter of having been specifically said, but I left that meeting indicating that 65 percent would be probably an approved figure.

Also, that 70 percent, certainly would be.

But a minor difference of 63 from 61.5 would [145] not be sufficient, and I buttressed that feeling on the fact that I argued prior to April 1 that the district percentages they were using were based on a census effective April 1, 1970.

THE COURT: When you speak of that, you speak of non-whites?

THE WITNESS: Yes.

They classify populations in three categories: White, non-white, which includes Puerto Rican and black and other and the other is a minor classification which is basically Eurasian and/or Chinese and not significant in this issue today.

I argued strenuously prior to April 1, that 61.5 percent was the April 1 makeup of the 57th District, and I argued this with respect to the other districts.

The best projections available would indicate their figure would be greater in 1974.

In arguing that and still having been told we had to improve the district lines, I thought it was logical for me to assume anything under 65 would not be acceptable. [146] Q. Was there ever any discussion of any particular plan that would involve the figure in the neighborhood of 63.4 or 63.7? A. No. At that time I did not anticipate that one of the plans that would have been given serious consideration would be a plan that would have generated a 63.4 percent for the 57th Assembly District.

Q. You thought that would be rejected? A. Yes.

Q. Page 7 of your report also indicates that as the Kings County Assembly, the Justice Department determined that it was necessary to obtain two additional Assembly Districts with substantial non-white population.

A. Again the Justice Department didn't specifically state we want you to create 7. The content of their letter led us to the conclusion that 5 was not enough, and based on the proportion of blacks and Puerto Ricans as compared to the white population in the adjacent district a very logical conclusion would be that at least 7 should be created.

Q. Your report says that 5 districts in the Kings County Assembly of the total of $21\frac{1}{2}$ were represented by non-whites at that time? A. Did you say $21\frac{1}{2}$?

Q. Is that right? [147] A. There are 22 Assembly Districts in Kings County and of these, five were represented by blacks and six had over 60 percent black population and one had a population of between 50 and 60 percent black based on 1970 figures.

Q. When you say 22 Assembly Districts, 21 and one being partial? A. That is correct.

Q. And of the total population of Kings County what percentage approximately of the total population was black, according to the 1970 census? A. It is open to great dispute but I believe it is approximately 400,000 out of 2.1 million. And I will stand corrected on that, is black. I believe that is a correct figure. I cannot—well, I haven't committed it to memory.

MR. SCHNAPPER: We will correct that on the record later on.

MR. LEWIN: Can I have an approximate figure?

MR. SCHNAPPER: We will have to check. My memory is that it is several hundred thousand larger and that the total non-white population is approximately $35\frac{1}{2}$ percent of of the county as a whole.

Q. Were there any Puerto Rican members in the Assembly from Kings County? [148] A. No.

Q. We are talking about five black Assemblymen—can we have an approximate percentage for the black population in Kings County?

MR. SCHNAPPER: I would guess it is 25 percent black and 10 percent Puerto Rican.

MR. ZUCKERMAN: I think that is large.

MR. LEWIN: 22 percent to 25.

Q. Was there any discussion with the Department of Justice as to whether it was that they concluded that with the 22 to 25 percent black population in Kings County representation by five black Assemblymen out of 21½ Assembly Districts was not prorated to the population? A. Yes, but in a different vein.

It was by reason where the black and Puerto Rican population resided. It was in a heavy consolidated neighborhood in the Bedford-Stuyvesant area. They felt the district as they existed was so substantially an overwhelming not white district that the effect of such districting clearly diluted the representation of the black community and in speaking with them they indicated that those districts which were so substantially non-white should be diluted and part of the non-white population should be placed in adjacent districts in order to affect greater population.

[149] At no time did the Justice Department indicate something like proportional representation, that since there are 25 percent black that they should have 25 representatives. It was more of a functional number residing in one specific area.

Q. Was there any discussion of separate Puerto Rican representation and the adequacy of that? A. Not to my recollection.

I am sure the issue was raised, but at most of my discussions I only seem to recollect breaking down to two categories, a minority being non-white and white being a majority.

Q. And a third category for other, non-Caucasian, non-black, non-Puerto Rican? A. Yes.

Q. Earlier today I showed you, I believe you said you hadn't seen them, but I showed you the complaint in this

case and specifically Paragraph 13 where it is alleged that the conclusion of the Attorney General or Mr. Pottinger was based not on any finding of evidence or lack of evidence tending to establish that there was purposeful racial gerrymandering designed to reduce black representation in the State Legislature when the 1972 re-apportionment and the 1966 re-apportionment was drawn.

[150] From your understanding of conversations with attorneys in the Department of Justice is that allegation true? A. Yes. They said the effect was to dilute the minority representation.

Q. That is Paragraph 14? A. Yes.

Q. Paragraph 15 says the Attorney General did not rest on any finding, evidence, or lack of evidence, tending to show there was a history of past official discrimination against the black electorate of Kings County only corrected by deliberate maximum of black voting strength in elections held in '74. Is that also true?

MR. SCHNAPPER: I object. We don't have to resort to Mr. Scolaro's opinions as to reasons.

You have a copy of the report, your Honor.

MR. LEWIN: The representative of the Attorney General spoke with Mr. Solaro.

MR. SCHNAPPER: That is double-hearsay.

THE COURT: Overruled.

Q. What allegation—well, what about allegation in Paragraph 15? A. At no time did any member of the Attorney General's staff indicate their decision was based on any past history of discrimination.

[151] Q. Paragraph 16, did they indicate to you in any way that there was anything other than the fact that it was possible to draw district lines which would create substantial, the complaint says black, read for black, non-white majorities? Is that true? A. I believe that comes out of the determination letter of April 1.

In my conversation with them they did not indicate that would be the only manner in which to effect compliance. They left that up to us, how to effect it.

Q. Read Paragraph 17. That refers to what you concluded, what you were told by attorneys in the Department of Justice and for black, read non-white? A. I believe that is valid.

Q. Paragraph 18. A. I am sorry, I cannot respond to that. I don't know what the majority of the Legislature felt. I certainly don't know the basis for the Governor's decision.

Q. Let us take 20.

We are referring to your actions in May after April 1 of 1974. A. The second sentence is clearly true. I do not feel the first sentence is entirely correct. We were guided by racial criteria in the determination of the U.S. Attorney but we certainly had other criteria which we considered as substantial, provided it didn't conflict with a supremacy provision.

Q. I think you testified the first is the first objection and principally you should read that, meaning principally in its literal sense.

When you set down in 74 after April 1 of 1974, that letter, you saw your first task being guided by questions of race, achieved certain standards that the Department of Justice laid down on that subject? A. We have a semantic problem. Clearly I felt that unless we apply the criteria established in the April 1 determination letter and set forth in the discussions I had with the Justice Department that we would never prevail and never get compliance. I am concerned with using the word principally. I was concerned with my state constitutional requirements also.

Q. You viewed your first task to get a specific number of non-white residents into these districts in certain senatorial and assembly districts? A. Yes.

Q. You mean districts less than 65 percent—more than 35 percent whites? A. Yes.

[153] Q. 21. A. I think the intent of it is correct.

The term several meanings may connote something more than what is true.

Q. You have forgotten the number of meetings you had? A. Definitely. They were cooperative and we would meet whenever they felt we could do something.

Q. You went over perhaps district by district? A. The meetings prior to April 1 we went over the 1972 district lines with them district by district in order to attempt to support those lines.

Subsequent to April 1 our meetings fell strictly with the issues in which we could effect compliance.

To this day, I had not gone over the 1974 lines with the Department of Justice district by district.

Q. The Justice Department is interested in '72 in hearing your explanation district by district? A. Yes.

Q. What did you talk about for five hours at that first meeting? A. Well, at that time it was our role to attempt to defend the '72 lines.

Q. I am sorry, I misunderstood you. I meant after [154] April of 1974. Did you have a long meeting with them after April of '74? A. The meeting after April 1 of '74 I think was about two to three hours and part of that time—the length of that time was increased by reason of meeting with different people at different times. We met with Mr. Turner, Mr. Jones and Mr. Selden and staff people and we attempted to more clearly define the guidelines that we were going to be required to employ. Our product, to the best of our knowledge, is the result of the guidelines that were at least inferred to us.

[155] Q. Let's go on to paragraph 22. A. Based on the determination that the 57th, as it existed after the 1972 apportionment was invalid, could not be—would not be considered a non-white district, it was clearly our opinion that the 55 to 60 percent would not be sufficient.

I think I have already answered the issue on how 65 became a number.

Q. Right.

How about paragraph—first sentence of paragraph 27?

Maybe I ought to put the question another way. If not for the race—for the race-conscious policy dictated by the Department of Justice, would your committee in any way have considered the segmentation of the Williamsburgh Hassidic community? A. We reapportioned in 1972, and clearly in 1972, we maintained that Hassidic community was a single entity within a district. At that time, we were aware of where the Hassidic community was. We were aware of it this time. We did not feel in 1974 that we could effect compliance because of the periphery population and the makeup of the periphery population of the 57 without dividing the Hassidic community.

Q. So that your reason for dividing the Hassidic community was to effect compliance with the Department of [156] of Justice determination, and the minimum standard they impose—they appear to impose? A. That was the sole reason. We spent over a full day right around the clock, attempting to come up with some other type of districting plan that would maintain the Hassidic community as one entity, and I think that evidenced clearly by the fact that that district is exactly 65 percent, and it's because we went block by block, and didn't go higher or lower than that, in order to maintain as much of the community as possible.

MR. LEWIN: That's all.

CROSS EXAMINATION

BY MR. ZUCKERMAN:

Q. Mr. Scolaro, one of the plaintiff's witnesses testified earlier today, that he believed that there might have been some animosity on the part of the Legislature for the Joint Committee on Reapportionment in dividing the Hassidic community in Williamsburgh.

To your knowledge, was there any attempt to obtain any form of revenge against the Hassidic community, or did anyone express any animosity to the Hassidic commu-

nity in Williamsburgh? A. Clearly, that's not true. There certainly was no animosity.

As a matter of fact, all segments of the Legislature, [157] clearly indicated to the staff of directing us to attempt to retain the Hassidic community as a community, and I think with the number of man-hours that went into attempting to reunite the Hassidic community, and still effect compliance, the good faith of the Legislature has been clearly demonstrated. Everything we attempted to do was just the opposite of that.

At the legislative level, we attempted very, very clearly to maintain the Hassidic community as a single community, and in fact did so, in two other areas in Brooklyn.

Q. Those areas were in Crown Heights and Borough Park? A. Yes, sir.

Q. So then the division of Williamsburgh was done strictly and solely to satisfy the demands of the United States Department of Justice? A. Yes. I can—if it will be of any help, I can explain how this all came about. I don't know if that's important.

Q. I think that might be helpful. A. In attempting to reapportion, to offset the compliance, we prepared enormous acetate overlays. The map that we worked on for Brooklyn is approximately 22 feet by 20 feet long. It's a monstrous thing. [158] It's up on a huge table, and three or four people can work on it at one time.

The overlays were prepared in two different colors. Red and blue just happen to be our guide. And block by block and census tract by census tract, we colored in in various proportions the Puerto Rican population, and the black population, all over the area.

The 57 area is totally bordered, by what we consider to be non-white population, except for the Hassidic Jewish area.

This (indicating) whole line, the line between 52 and 57, 53 and 57, and 56 and 57, with the exception of the Hassi-

dic community is not considered to be a substantial white area.

Now, there are variables in here. The Hassidic community that we were dealing with at that time, we were very much aware of it, was the area bounded by initially Marcy Street—Marcy Avenue, excuse me, down to approximately Lynch, I believe.

Now, that population is there, according to our statistics, which is a merger of the first and third County census tapes, was approximately 11,500 or 12,500 people. It was in that area. One hundred percent white on any census map. Every other peripheral area was no better than [159] thirty percent non-white.

To move 11,000 people out of the 56th and back into the 57th and still comply with one-man, one-vote, of having identical population in the adjacent districts, and our own block on the border problems, we would have had to have taken 11,000 of the exact number of whites out of the 57th and replaced them either in the 56th or in one of the other adjacent districts.

The population would have to be equal, but the white population going in would have to be equal to the White population going out.

The principal area that is white and totally white in the 57th was in this area right here (indicating).

Q. Could you describe geographically, you pointed to the western—southwestern extremity?

Rather, the—perhaps by streets, because the testimony won't pick up what, on the map, you are pointing to. A. Yes. These maps are very difficult to read, but it would be substantially the area on the map, immediately west of the number five, in running north and south of the number five. There are probably other people in this room who can testify to that better. In this area (indicating).

It would be more in the western portion, but not on the line of the 57th district, because the line is not [160]

considered to be under census criteria one hundred percent white, as is the Hassidic community.

My problem, and our problem in doing this is, in order to get into what would be considered a white area and remove that white area out of the 57 district, so that it could be replaced with a Hassidic community, we had to go along the line. We had to go up into that area by going to the periphery of the existing line.

In doing that, we automatically picked up non-white population, and no matter how hard we tried and came up—and the people that were there working with us, could also indicate this—we came up with probably ten or twelve different ideas. We put them all through computer analysis. We applied block on the border.

The best district we could come up with by replacing the entire Hassidic community in the 57 district, would be a district of approximately 63.4 percent non-white, and it was our determination at that time, after all of our consultation with the Justice Department, that increasing a percentage from 61.5 to 63.4, would not be acceptable to effect compliance, and so, those changes, required changing six districts, changing all districts, and it was just an infinite number of ways of doing it, and every way that was suggested to us, and every way we came up with ourselves, never got to 65 [161] percent.

Q. Mr. Scolaro, you have mentioned the block on the border problem. I think it might be advisable to inform the Court, just what is the block on the border requirement, of the New York State Constitution? A. As it pertains to the County of Kings, whenever we are drawing Senate or Assembly lines within a City, the difference in population between two adjacent districts having a common border, can be no greater than the population of the smallest block on that border.

For instance, if you went down Fifth Avenue in New York, you would have—you would go from 14th Street all the way to 160th Street, right on the Fifth Avenue border.

You'd have an East Side and a West Side, so you'd have two blocks for every street that bisected that.

The population of the two districts which are bordered by Fifth Avenue, that are adjacent to each other, can be no greater than the population of the smallest block that's on that same border, and generally when you get into a city like this, you always end up with a zero block, or a one or a two population block, which requires your adjacent districts to be exactly equal in population.

An example would be between the 57th and 56th. This would be the borderline (indicating), this dark black line [162] here.

Therefore, we had to look at the population of every single block that touches that black line, and whatever the smallest population was that we found, that determined the difference in population between the 57 and the 56. And in reading the report, you will, I think now more fully understand why the numbers are so exact. It's because they are required to be exact.

It also, incidentally, is the reason why reapportionment takes forever, because it has to be done manually, and trying to change your population in drawing that line back and forth, takes literally hours and hours and hours. [163] Q. Now, Mr. Scolaro, going back to the discussions with the Department of Justice before their April 1st ruling this—I refer now to a conference in the Department of Justice at approximately the middle of March of 1974. Do you recall trying to advise the staff members of the Civil Rights Division of the Department of Justice of exactly this problem of trying to preserve the Hassidic community in Williamsburgh? A. Yes, sir; and not only there. I think we brought up—we argued very strenuously at that time that we should attempt to preserve the Hassidic community and that any modification of the 57 may result in the Hassidic community not being contained as an integral unit.

At that time we had not drawn any plans because we did not anticipate an adverse decision and as a result may not have—I wasn't in a position to say that you definitely would have to divide the Hassidic community.

But we argued it also with respect to the northern portion, I believe, of the 41st Assembly District and also with respect to the Borough Hall area. Where the Hassidic communities were, to the extent that we had defined them as communities.

Q. Was it your impression at that time that the Department of Justice had any real understanding of the nature [164] of the Hassidic community in Brooklyn? A. Clearly they did not. They were not able to define them.

I think one member could—could define what a Hassidic Jew was or is, but no, they certainly did not have a complete understanding of the problems involved in reapportionment within the Hassidic community.

Q. You also recall one staff member of the Department of Justice, I believe his name was Richard Selton? A. Yes.

Q. Who after studying the maps of Brooklyn for some nine weeks asked us if we could point out where Williamsburgh was on the map of Brooklyn? A. Yes, sir.

As a matter of fact, I think at that meeting he had—he had the Hassidic community in a totally different area.

Q. You also remember the same Mr. Selton asking why there were so few people living in the center of Brooklyn, and we had to explain to him that he was pointing to Prospect Park? A. Yes.

As a matter of fact, one of the objections that they had to the Assembly District as then existed was that the 44th Assembly District was a clear indication of an [165] effect of diluting minority representation because there was no reason to join the area north of Prospect Park with the area south of Prospect Park, and the fact that we had this immense park in the middle was, I assume, was employed by us to disguise adding the real reason

for the north and the south being added together, and we had to explain to them that there isn't much we can do about parks.

Q. I have one final question:

In all your years and work on the Joint Committee on Reapportionment, would you say that after April 1, 1974, for the first time you and the committee made a color-conscious approach in drawing district lines? A. I'm not sure I understand what you mean.

Q. I'm saying, prior to April 1, 1974, had the committee ever intended to maximize or to minimize the number of legislative districts based on race? A. Frankly, it's a whole new ball game to me. We have always reapportioned from the peripheral areas of the geographic communities and worked towards the center.

This is the first time that I have ever been involved in reapportionment where we had this immense reapportionment with a specific ethnic group right in the center of the community in our fall-out areas where non-traditional areas that were on the borders of rivers that [166] were—or other national geographic boundaries.

THE COURT: I think we are getting into repetition.

MR. ZUCKERMAN: Right.

I have no further questions.

CROSS EXAMINATION

BY MR. SCHNAPPER:

Q. Mr. Scolaro, if I might start, let me make sure I have a clear picture here of chronology of events leading to these lines.

On February 1st of this year, you submitted the 1972 district lines for federal approval; is that correct? A. They were submitted by the Attorney-General's Office.

Q. Right. They were submitted by them.

On April 1st, the Attorney General ruled on those lines? A. That's correct, U.S. Attorney.

Q. That's right. He held, as I understand it, that the Senate and the Assembly and the Congressional lines all had the effect of discriminating on the basis of race against non-whites; is that correct? A. In favor of non-whites, I think. Against non-whites? I'm sorry.

[167] Q. The lines discriminated against non-whites, the '72 lines? A. Yes, that's correct.

Q. All right. And thereafter, these lines were proposed by you and enacted by the Legislature in an attempt to comply with the Justice Department ruling? A. That's correct.

Q. Now, Mr. Lewin raised a question about the intent of the Legislature. Did the Attorney General's letter contain a finding that—as to the intent of the Legislature one way or the other? A. No, sir; just said that the effect of what had been done by the Legislature in passing the '72 lines was to racially discriminate against non-whites.

Q. Did not reach the question of intent? A. No, sir.

Q. One way or the other? A. It does not.

Q. Now, are you aware—have you reviewed the entire record that was before the Attorney General when he made his decision? All the materials that were submitted? Did you go in and get copies of everything that came in? A. No, sir, I did not.

Q. So you are not able to testify as to whether or [168] not there might have been evidence of deliberate discrimination presented to the Attorney General, purposeful discrimination? Just in terms of evidence that might have come in? A. I am able to testify that this issue was raised in the state court and in which I played a role and there was a determination that there was not any racial discrimination in the '72 line.

Q. I understand that. But we're now talking about the evidence that the Attorney General had and you are not able to testify that he did not have some evidence or allegations regarding discriminatory purpose? As you say, you didn't look over the entire file? A. I did not look

over the entire file but I still—I did look over some of your submissions, sir, and to the extent that they—some of the material that you supplied can be considered evidence, we have a basic disagreement.

Q. But I take it, our disagreement was that the materials which we submitted took the position there had been deliberate discrimination and you in fact disagreed that that was the case? A. I think your finding indicated that there had not been a—that the result—the result of the reapportionment or the effect of the reapportionment [169] indicated that there was—minority representation had been diluted, but there was nothing in their decision that indicates that there was any purpose.

Q. Or that there wasn't? There is nothing about purpose at all? A. Then we are in agreement.

Q. Okay. Now let me just see if I have a clear picture of the amount of time that was involved here.

THE COURT: Let's not go over the testimony again. We have all heard the testimony.

MR. SCHNAPPER: I'm sorry. I want to get clear how long it takes to prepare these lines because it may be relevant to whether or not interim—

THE COURT: I am just making that observation, counsel. You may disagree with it.

[170] Q. Can you tell me how long it took to prepare these 1974 district lines? A. Two months.

Q. Now, if the Court were to order reapportionment on a different standard, say 50 per cent a non-white district and you have to redraw the geographical Assembly lines and comply with the block on border and other legal requirements, how long would it take you to prepare such lines and, I suppose, how long would be the total amount of time which it would take to enact another district set of lines which were in compliance with a completely different standard? A. Probably six weeks.

I have waited for years to be able to say in a Courtroom that, because so far as I had read, you can do it

overnight. The same argument was made to the Judicial Commission in 1966 and they had to ask for an extension of time, as I recall to the best of my recollection, because it takes an enormous amount of time to put it all together and draw the lines and describe those lines and enclose the lines to make sure that all people are counted, then to draft a bill to comply with it, that is block on border-wise, and it is an enormous task and you are limited by the number of people that can work at one time. Two people will draw the Assembly district lines in Brooklyn, two people may be working somewhere [171] else on the Assembly district lines of Manhattan, but the allegation that was made previously I think was that if it takes two people one hour to draw one Assembly district, then fifty people could draw twenty-five Assembly districts in one hour: that is just not so, it cannot be done.

THE COURT: Counselor, we are at the point where we usually adjourn.

I don't want to hurry you, but how long will you be with this?

MR. SCHNAPPER: I think I am probably going to take about another half hour.

THE COURT: What?

MR. SCHNAPPER: I think about another half hour.

THE COURT: I think we had better adjourn.

Do you have any other witnesses, Counselor?

MR. LEWIN: Your Honor, I have several things, but in terms of convenience of the witness, I think he lives up in Albany and is planning to return.

I will not call, except for one other possible witness, I will not call any other witnesses, there is a matter of timing on this. Further, unfortunately, I have to be back in Washington tomorrow morning and therefore if we were to adjourn this I suppose it would be adjourned until Monday.

[172] I would ask that this be adjourned until Monday and yet because of the urgency of the matter, I would hope

we could terminate the hearing today, I wonder if that could be done?

THE COURT: Well, if you can terminate it within a reasonable time, and I don't want to pressure you, but I have just made my statement on it.

MR. LEWIN: Well, I don't know—

MR. SCHNAPPER: I will endeavor to be as brief as possible under the circumstances.

MR. LEWIN: I don't know—we won't have any other witness.

THE COURT: What?

MR. LEWIN: We will not have any other witnesses.

THE COURT: All right.

CROSS EXAMINATION

BY MR. SCHNAPPER (continued)

Q. Now, Mr. Scolaro, you testified with regard to the problem of the Hassidic community in the 57th Assembly district that you had concluded that it would not be possible to put all the Hassidic community in the 57th Assembly district without violating the Department of Justice orders; is that correct, sir? A. That is correct.

[173] Q. Now, did you consider putting the entire Hassidic community in the 56th Assembly district? A. That was one variable that we came up with, yes, and that would require a moving of a portion of the Hassidic community which is presently in the 57th district, totally into the 56th district, and that would have resulted, to the best of my knowledge, in two districts, both of which would be over 65 per cent non-white, and the 56th district with the Hassidic community in total in that community would probably be close to 76, 77 per cent non-white—

Q. So— A. The only white community in this whole community would be the Hassidic Jewish community, there would be no other whites.

Q. But, Mr. Scolaro, in hindsight, it would have been possible under that scheme to both comply with the Justice

Department 65 per cent standard, if that was their standard, and keep the Hassidic community together? A. Yes, sir, but it was my judgment in trying to apply the Department of Justice overall criteria that that would definitely make no representation for the Hassidic community at all and that it would be such a minority group in an overwhelmingly black area that they would have not had any representation. They would compose approximately 25,000 [174] people out of 121,000 people and 90,000 of those 121,000 or more would be black.

Q. So it was your concern that if the Hassidic community was kept together by being put into the heavily black 56th Assembly district, that because they were white they would not have had as much representation, effective representation, than they might have in a more white district? A. I thought we could still, in effect, have compliance and still maintain to the extent possible the Hassidic community which would have a viable voice, yes, by placing them in the 56th.

Q. You don't mean by just keeping them together, to keep them together in a heavily white district? A. In a district that would be more white than is involved in the 56th district.

I think the 56th, according to a report, is 90 per cent—

Q. I think it is 88 per cent. A. 88 per cent non-white—

THE COURT: We have been through this percentage business time and time again.

You are present as an amicus curiae, and as I understand the rule as it applies to amicus curiae—well, take this off the record.

[175] (Discussion was off the record.)

MR. SCHNAPPER: I just have a few more questions, your Honor.

THE COURT: Yes, all right.

BY MR. SCHNAPPER:

Q. There is one other question about the percentage which I think is important and which hasn't been brought out, and I wish to ask you a question about the Senatorial district:

Would it be, would it have been or would it be possible to redraw the Senate lines so that the entire Hassidic community was within a single Senatorial district and still comply with the 65 per cent requirement? A. You are dealing with such a large number in the Senatorial district, 304,000 people, that I am sure there would be a way; to the best of my recollection, there would be a way of drawing Senatorial lines if you redraw the other lines and you could probably affect compliance.

Q. All right, sir.

And I take it that if a different standard were applied, there would be no guarantee that the Legislature would put the Hassidic community back together or not; that would be up to them.

THE COURT: Of course, I can answer that, I can give you the answer to that.

[175a] MR. SCHNAPPER: OK, thank you.

[176] THE COURT: Well, we have reached the time that we will conclude today, counselor.

Now, you rest, as I take it, the plaintiff?

MR. LEWIN: Yes.

Your Honor, just one matter came up in Mr. Scolaro's examination that I would like to ask the witness one question on.

REDIRECT EXAMINATION

BY MR. LEWIN:

Q. That 63.4 percent plan that was worked out and which you say you decided was too small really to pass the Department of Justice' standard, is that available today?

I mean, you have it down on a piece of paper someplace up in Albany so that it could be produced, if the Court required it? A. I can't really answer that truthfully, but it would be my opinion that it is not available because generally, in order to avoid confusion, we destroy everything that is a part of it. Our experience in the past has been that if we don't, then the wrong maps get out and everybody gets confused.

It could be reconstructed.

Q. It could be reconstructed in less than the six-week period? A. If I only had to draw one district.

[177] Q. That would require just redrawing that one district, and that could be done in a day or two days; is that possible? A. Within two to three days one district could be.

THE COURT: Does that conclude the hearing?

MR. ZUCKERMAN: Your Honor, I have just one question.

THE COURT: All right.

CROSS EXAMINATION

BY MR. ZUCKERMAN:

Q. Were there other communities in the past that have been divided in the drawing of assembly and senate district lines? A. This happens all the time, every single time we have a re-apportionment we have received a great deal of mail, we have litigated this issue many times before. I don't know any way of re-apportioning without dividing communities. For instance, in Brooklyn, we have had testimony as to some 50 different communities. Some people will recall that Boro Park has been divided, I know Brooklyn Heights has been divided in the '72 re-apportionment, the Brooklyn Heights Association was involved in litigation.

Yes, constantly, whenever there has been re-apportionment. There is no way of dividing 2,100,000 people into 22 [178] assembly districts without dividing communities.

MR. ZUCKERMAN: Thank you.

REDIRECT EXAMINATION

BY MR. LEWIN:

Q. But that has never been done, Mr. Scolaro, on account of race, because you didn't have a racial criterion? A. We have never tried to draw districts before in order to guarantee to the non-white population as much representation as possible.

THE COURT: Where do we stand, counselor?

MR. LEWIN: Well, your Honor, I would just like to complete the record, I have three sets of maps of the 1971 or '72 re-apportionment that I think would be useful.

MR. ZUCKERMAN: Why don't you put them in as exhibits?

MR. LEWIN: I am going to put them in as exhibits.

THE WITNESS: Am I excused?

THE COURT: Yes.

(The witness was excused.)

MR. LEWIN: This will be Exhibit No. 4.

THE CLERK: One at a time.

Three re-apportionment maps received in Evidence [179] as Plaintiff's Exhibit 4, as one exhibit, a composite.

MR. LEWIN: Then I have the maps of the 1966 reapportionment of Kings County for the Senate and Assembly, and a large one for the Congress, these are bad Xerox but the originals appear as Volume 17-A of the New York second reporter, but I would like to put in the Xeroxes.

MR. SCOLARO: I have some maps which you may be able to use.

MR. LEWIN: All right, let me put in them, thank you, Mr. Scolaro.

This is '66 Senate and Assembly maps, let's make those No. 5 in Evidence.

THE COURT: Counsel, did you plan to submit any memoranda on this?

MR. LEWIN: Well, your Honor, I was going to get to that next.

THE COURT: It would be helpful.

MR. LEWIN: Yes, sir.

Your Honor, of course the matter of timing is very important, we haven't gotten into the question of relief, the specific kind of order we would like, the relief, the kind of preliminary injunction which we would like.

[180] THE COURT: Well, I'm just inquiring whether you intend to submit a memorandum.

MR. LEWIN: We would like to do so.

THE COURT: How much time would you want on that?

MR. LEWIN: Because of the urgency of the matter, we would like to be able to file everything really by I suppose Tuesday morning.

THE COURT: I won't hurry you, I will just put down whatever time you say you feel you would want.

MR. LEWIN: We would want to hurry things along, we think it is important that it be decided as early as possible.

THE COURT: I will leave it to you to submit your memorandum, I will say that.

MR. LEWIN: If we can schedule it—

MR. ZUCKERMAN: If we can be served, well, whenever we are served I hope to have an answering memorandum within three days after being served.

THE COURT: Well, all right, I don't think there will be any disagreement on that.

MR. LEWIN: It is just as we say, we recognize that the clock is running against us and we are sure that no matter how fast your Honor decides this case, judging by the diversity of views expressed in the [181] courtroom, somebody will take it to the Court of Appeals, and that is going to make it that much later, so—

THE COURT: Well, I don't like to deprive the Court of Appeals of business, I will say that.

MR. LEWIN: So our feeling is that we are going to get it done as soon as possible, and we would hope that if all the other parties in the action are required to file, that they file within three days after our filing, and—

THE COURT: That is understood.

We will leave it that way, then.

So all sides rest and memoranda will come within the time stated.

MR. LEWIS: Fine.

I would also like to then make the '68 and '70 Congress maps as the next plaintiff's exhibit.

THE CLERK: 1968 and '70 Congressional maps received in evidence as Plaintiff's Exhibit 6.

MR. LEWIN: Also the '72 Senate, Assembly and Congress maps as Plaintiff's Exhibit 7.

THE CLERK: So marked as Plaintiff's Exhibit 7.

MR. LEWIN: Also the '74 Senate, Assembly and Congress maps as Plaintiff's Exhibit B.

No, no, I guess these are duplicates.

[182] Now, the only other thing which I would like to submit, just for the convenience of the Court, I suppose, is one major contemporary study of the Hassidic community by Solomon Poll.

THE CLERK: So marked.

MR. SCHNAPPER: We would like to submit by tomorrow afternoon some of the material which was submitted to the Department of Justice by the State and ourselves, it is important background, I think, to what went on.

MR. LEWIN: Sure, we have no objection to that.

THE COURT: You have no objection to that.

That concludes your presentation, gentlemen?

MR. ZUCKERMAN: Yes, your Honor.

MR. SCHNAPPER: Yes, your Honor.

THE COURT: Thank you.

* * * * *

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3	Report	134	137
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7	Maps		180
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Plaintiffs' Exhibit 1

STATE OF NEW YORK

S. 1

Extraordinary Session

SENATE—ASSEMBLY

May 29, 1974

IN SENATE—Introduced by COMMITTEE ON RULES
—(at request of the Joint Committee on Reapportionment)—read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY—Introduced by COMMITTEE ON RULES—(at request of the Joint Committee on Reapportionment)—read once and referred to the Committee on Rules

AN ACT

To amend the state law, in relation to certain assembly and senate districts and to repeal the descriptions relating to such districts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known as the "Reapportionment Compliance Act of nineteen hundred seventy-four", and its purposes are to effectuate compliance with the determination of the United States Department of Justice dated April first, nineteen hundred seventy-four, and to comply with sections four and five of the Voting Rights Act of nineteen hundred sixty-five insofar as applicable.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is old law to be omitted.

§ 2. The descriptions of the forty-fourth, forty-seventh, forty-eight, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-third, fifty-fifth, fifty-sixth, fifty-seventh, fifty-ninth, seventieth, seventy-first, seventy-second, and seventy-fourth assembly districts contained in section one hundred twenty-one of the state law are hereby repealed, and new descriptions of such districts are hereby inserted therein, in lieu thereof, to read, respectively, as follows:

44. FORTY-FOURTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Parkside avenue intersects Ocean avenue, thence along Ocean avenue to Woodruff avenue, to East Twenty-first street, to Caton avenue to Flatbush avenue, to Martense street, to Bedford avenue, to Snyder avenue, to Flatbush avenue, to Stephens court, to East Twenty-third street, to Farragut road, to East Twenty-second street, to Foster avenue, to East Nineteenth street, to Glenwood road, to East Eighteenth street, to Foster avenue, to Argyle road, to Glenwood road, to Coney Island avenue, to Ditmas avenue, to East Third street, to Cortelyou road, to McDonald avenue, to Ditmas avenue, to Dahill road, to Thirty-seventh street, to Fifteenth avenue, to Dahill road, to Caton avenue, to McDonald avenue, to Greenwood avenue, to East Second street, to Caton avenue, to East Fifth street, to Prospect expressway, to Greenwood avenue, to Prospect park southwest, to Prospect park west, to Sixth street, to Eighth avenue, to Fifth street, to Seventh avenue, to Sixth street, to Sixth avenue, to Fourth street, to Seventh avenue, to Third street, to Sixth avenue, to Union street, to Seventh avenue, to Berkeley place, to Grand Army Plaza west, to Lincoln place, to Eighth avenue, to Flatbush avenue, to to Sterling place, to Vanderbilt avenue, to Grand Army Plaza east, to Eastern Parkway, to New York avenue, to Malbone street, to Clove road, to Empire boulevard, to Nostrand avenue, to Montgomery street, to Rogers avenue, to Empire boulevard, to Ocean avenue, thence along

said avenue to its intersection with Parkside avenue, the point of beginning.

47. **FORTY-SEVENTH DISTRICT.** That part of the county of Kings bounded by a line described as follows: Beginning at a point where Nineteenth avenue extended intersects the waters of Gravesend Bay, thence northerly along said avenue extended and said avenue, to Benson avenue, to Eighteenth avenue, to Eighty-sixth street, to New Utrecht avenue, to Eighteenth avenue, to Seventy-sixth street, to Nineteenth avenue, to Seventy-third street, to Twentieth avenue, to Seventy-second street, to Nineteenth avenue, to Bay Ridge avenue, to Seventeenth avenue, to Sixty-seventh street, to Sixteenth avenue, to Sixty-third street, to Twenty-first avenue, to Sixty-second street, to Bay parkway, to Sixty-fifth street, to West Fifth street, to Avenue P, to Dahill road, to Avenue O, to McDonald avenue, to Quentin road, to East Second street, to Avenue P, to East Third street to Avenue O, to East Fifth street, to Avenue P, to Ocean parkway, to Avenue R, to Kings highway, to McDonald avenue, to Avenue T, to West Ninth street, to Avenue V, to Stillwell avenue, to Bay Fiftieth street, to Cropsey avenue, to its intersection with the waters of Coney Island creek, and through the waters of Coney Island creek and Gravesend Bay to Nineteenth avenue extended, the point of beginning.

48. **FORTY-EIGHTH DISTRICT.** That part of the county of Kings bounded by a line described as follows: Beginning at a point where Coney Island avenue intersects Ditmas avenue, thence along Coney Island avenue to Glenwood road, to Argyle road, to Foster avenue, to East Eighteenth street, to Glenwood road, to East Nineteenth street, to Foster avenue, to East Twenty-second street, to Glenwood road, to Ocean avenue, to Avenue I, to East Seventeenth street, to Avenue H, to East Fifteenth street, to Avenue J, to Coney Island avenue, to Avenue M, to East Tenth street, to Avenue P, to East Ninth street, to

Quentin road, to East Eighth street, to Avenue P, to East Seventh street, to Quentin road, to Ocean parkway, to Avenue P, to East Fifth street, to Avenue O, to East Third street, to Avenue P, to East Second street, to Quentin road, to McDonald avenue, to Avenue O, to Dahill road, to Avenue P, to West Fifth street, to Sixty-fifth street, to Bay parkway, to Sixty-second street, to Twenty-first avenue, to Fifty-ninth street, to Nineteenth avenue, to Fifty-fifth street, to Seventeenth avenue, to Fifty-ninth street, to New Utrecht avenue, to Fifty-eighth street, to Fort Hamilton parkway, to Fifty-second street, to Twelfth avenue, to Forty-eight street to New Utrecht avenue to Forty-seventh street, to Twelfth avenue, to Forty-third street, to Thirteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Thirty-ninth street, to Fifteenth avenue, to Thirty-eighth street, to Dahill road, to Ditmas avenue, to McDonald avenue, to Cortelyou road, to East Third street, to Ditmas avenue, thence along said avenue to its intersection with Coney Island avenue, the point of beginning.

49. **FORTY-NINTH DISTRICT.** That part of the county of Kings bounded by a line described as follows: Beginning at a point where Nineteenth avenue extended intersects the waters of Gravesend bay, thence northerly along said avenue extended and said avenue, to Benson avenue, to Eighteenth avenue, to Eighty-sixth street, to New Utrecht avenue, to Eighteenth avenue, to Seventy-sixth street, to Nineteenth avenue, to Seventy-third street, to Twentieth avenue, to Seventy-second street, to Nineteenth avenue, to Bay Ridge avenue, to Seventeenth avenue, to Sixty-seventh street, to Sixteenth avenue, to Sixty-third street, to Twenty-first avenue, to Fifty-ninth street, to Nineteenth avenue, to Fifty-fifth street, to Seventeenth avenue, to Fifty-ninth street, to New Utrecht avenue, to Sixty-fifth street, to Fourteenth avenue, to Sixty-sixth street, to Thirteenth avenue, to Sixty-second street, to

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50. FIFTIETH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Second avenue intersects Thirty-ninth street, thence southerly along said avenue to Forty-first street, to First avenue, to Forty-second street, to Second avenue, to Forty-sixth street to Gowanus Expressway, to Forty-third street, to Fourth avenue, to Forty-eighth street, to Sixth avenue, to Fiftieth street, to Eighth avenue, to Fifty-sixth street, to Ninth avenue, to Fifty-fourth street, to Fort Hamilton parkway, to Fifty-eighth street, to New Utrecht avenue, to Sixty-fifth street, to Fourteenth avenue, to Sixty-sixth street, to Thirteenth avenue, to Sixty-second street, to Eighth avenue, to Sixty-first street, to Seventh avenue, to Sixty-fourth street, to Eighth avenue, to Seventieth street, to Seventh avenue, to Seventy-first street to Eighth avenue, to Seventy-second street, to Twelfth avenue, to Eightieth street, to Eleventh avenue, to Eighty-first street, to Seventh avenue, to Eighty-third street, to Dahlgreen place, to Eighty-fourth street, to Seventh avenue, to Eighty-fifth street, to Dahlgreen place, to Eighty-sixth street, to Gatling place, to Eighty-eighth street, to Fourth avenue, to Eighty-eighth street, to Ridge

boulevard, to Bay Ridge parkway, thence along said parkway and said parkway extended into the waters of the Narrows, and through the waters of the Narrows, Upper Bay, and Gowanus bay to their intersection with Thirty-ninth street extended thence along said street extended and said street to its intersection with Second avenue, the point of beginning.

51. FIFTY-FIRST DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Second avenue intersects Thirty-ninth street, thence along said avenue to Thirty-sixth street, to Gowanus expressway, to Eighteenth street, to Fourth avenue, to Tenth street, to Third avenue, to Eighth street, to Fourth avenue, to Seventh street, to Fifth avenue, to Fifth street, to Sixth avenue, to Sixth street, to Seventh avenue, to Fifth street, to Eighth avenue, to Sixth street, to Prospect park west, to Prospect park southwest, to Greenwood avenue, to Prospect expressway, to East Fifth street, to Caton avenue, to East Second street, to Greenwood avenue, to McDonald avenue, to Caton avenue, to Dahill road, to Fifteenth avenue, to Thirty-seventh street, to Dahill road, to Thirty-eighth street, to Fifteenth avenue, to Thirty-ninth street, to Fourteenth avenue, to Thirty-seventh street, to Thirteenth avenue, to Forty-third street, to Twelfth avenue, to Forty-seventh street, to New Utrecht avenue, to Forty-eighth street, to Twelfth avenue, to Fifty-second street, to Fort Hamilton parkway, to Fifty-fourth street, to Ninth avenue, to Fifty-sixth street, to Eighth avenue, to Fiftieth street, to Sixth avenue, to Forty-eighth street, to Fourth avenue, to Forty-third street, to Gowanus expressway, to Forty-sixth street, to Second avenue, to Forty-second street, to First avenue, to Forty-first street, to Second avenue, to its intersection with Thirty-ninth street, the point of beginning.

52. **FIFTY-SECOND DISTRICT.** That part of the county of Kings bounded by a line described as follows: Beginning at a point where the Kings-New York county line intersects Cadman plaza west extended, thence southerly along said line into the waters of Upper Bay, and through the waters of Upper Bay and Gowanus Bay to their intersection with Thirty-ninth street extended, thence along said street extended and said street, to Second avenue, to Thirty-sixth street, to Gowanus expressway, to Eighteenth street, to Fourth avenue, to Tenth street, to Third avenue, to Eighth street, to Fourth avenue, to Seventh street, to Fifth avenue, to Fifth street, to Sixth avenue, to Fourth street, to Seventh avenue, to Third street, to Sixth avenue, to Union street, to Seventh avenue, to Berkeley place, to Grand Army plaza west, to Lincoln place, to Eighth avenue, to Flatbush avenue, to Sterling place, to Vanderbilt avenue, to Atlantic avenue, to Fifth avenue, to Warren street, to Fourth avenue, to Douglass street, to Third avenue, to Butler street, to Nerins street, to Baltic street, to Bond street, to Douglass street, to Hoy street, to Dean street, to Smith street, to Bergen street, to Court street, to State street, to Boerum place, to Schermerhorn street, to Court street, to Cadman plaza west, to Orange street, to Henry street, to Cranberry street, to Cadman plaza west, to Henry street, to Poplar street, to Hicks street, to the Brooklyn-Queens expressway, to Cadman plaza west, thence northwesterly along Cadman plaza west, and Cadman plaza west extended to its intersection with the Kings-New York county line, the point of beginning.

53. **FIFTY-THIRD DISTRICT.** That part of the county of Kings bounded by a line described as follows: Beginning at a point where Atlantic avenue intersects Grand avenue, thence along Atlantic avenue to Franklin avenue, to Brecoort place, to Bedford avenue, to Fulton street, to Brooklyn avenue, to Atlantic avenue, to Albany avenue, to Fulton street, to Utica avenue, to Atlantic avenue, to

Rochester avenue, to Pacific street, to Utica avenue, to Bergen street, to Rochester avenue, to Prospect place, to Buffalo avenue, to Lincoln place, to Ralph avenue, to East New York avenue, to Lefferts avenue, to Schenectady avenue, to Eastern parkway, to Grand Army plaza east, to Vanderbilt avenue, to Atlantic avenue, to Carlton avenue, to Fulton Street, to Gates avenue, to Cambridge place, to Fulton street, to Grand avenue, to its intersection with Atlantic avenue, the point of beginning.

55. **FIFTY-FIFTH DISTRICT.** That part of the county of Kings bounded by a line described as follows: Beginning at a point where Greene avenue intersects the Kings-Queens county line, thence southwesterly along said avenue to Knickerbocker avenue, to Bleecker street, to Wilson avenue, to Greene avenue, to Evergreen avenue, to Menahan street, to Bushwick avenue, to Grove street, to Goodwin place, to Greene avenue, to Broadway, to Ralph avenue, to Gates avenue, to Reid avenue, to Putnam avenue, to Stuyvesant avenue, to Jefferson avenue, to Reid avenue, to Marion street, to Fulton street, to Utica avenue, to Atlantic avenue, to Rochester avenue, to Pacific street, to Utica avenue, to Bergen street, to Rochester avenue, to Prospect place, to Buffalo avenue, to Lincoln place, to Ralph avenue, to East New York avenue, to Saratoga avenue, to Park place, to Hopkinson avenue, to Prospect place, to Saratoga avenue, to St. Marks avenue, to Howard avenue, to Bergin street, to Saratoga avenue, to Hancock street, to Broadway, to Hancock street, to Bushwick avenue, to Eldert street, to Evergreen avenue, to Covert street, to the Kings-Queens county line, thence northwesterly along said line to its intersection with Green avenue, the point of beginning.

56. **FIFTY-SIXTH DISTRICT.** That part of the county of Kings bounded by a line described as follows: Beginning at a point where Broadway intersects Marcy avenue, thence southeasterly along Broadway, to Boerum street,

to Lorimer street, to Broadway, to Cook street, to Graham avenue, to Debevoise street, to Broadway, to Thornton street, to Flushing avenue, to Marcy avenue, to Myrtle avenue, to Throop avenue, to Lexington avenue, to Stuyvesant avenue, to Quincy street, to Reid avenue, to Putnam avenue, to Stuyvesant avenue, to Jefferson avenue, to Reid avenue, to Marion street, to Fulton street, to Albany avenue, to Atlantic avenue, to Brooklyn avenue, to Fulton street, to Bedford avenue, to Brevoort place, to Franklin avenue, to Atlantic avenue, to Grand avenue, to Putnam avenue, to Classon avenue, to Lafayette avenue, to Franklin avenue, to DeKalb avenue, to Skillman street, to Willoughby avenue, Franklin avenue, to Myrtle avenue to Bedford avenue, to Park avenue, to Skillman street, to Flushing avenue, to Bedford avenue, to Wallabout street, to Wythe avenue, to Heyward street, to Bedford avenue, to Brooklyn-Queens expressway, to Marcy avenue, to its intersection with Broadway, the point of beginning.

57. FIFTY-SEVENTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where North Third street extended intersects the Kings-New York county line, thence along said street extended and said street to Wythe avenue, to Metropolitan avenue, to Berry street, to South Eighth street, to Driggs avenue, to Grand street extension, to Marcy avenue, to Brooklyn-Queens expressway, to Bedford avenue, to Heyward street, to Wythe avenue, to Wallabout street, to Bedford avenue, to Flushing avenue, to Skillman street, to Park avenue, to Bedford avenue, to Myrtle avenue, to Franklin avenue, to Willoughby avenue, to Skillman street, to DeKalb avenue, to Franklin avenue, to Lafayette avenue, to Classon avenue, to Putnam avenue, to Fulton street, to Cambridge place, to Gates avenue, to Fulton street, to Carlton avenue, to Atlantic avenue, to Fifth avenue, to Warren street, to Fourth avenue, to Douglass street, to Third avenue, to Butler street, to

Nevins street, to Baltic street, to Bond street, to Douglass street, to Hoyt street, to Dean street, to Smith street, to Bergen street, to Court street, to State street, to Boerum place, to Schermerhorn street, to Court street, to Cadman plaza west, to Orange street, to Henry street, to Cranberry street, to Cadman plaza west, to Henry street, to Poplar street, to Hicks street, to Brooklyn-Queens expressway, to Cadman plaza west, thence northwesterly along said plaza and said plaza extended, to its intersection with the Kings-New York county line, thence easterly and northerly along said line to its intersection with North Third street extended, the point of beginning.

59. FIFTY-NINTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Greene avenue intersects the Kings-Queens county line, thence southwesterly along said avenue to Knickerbocker avenue, to Bleecker street, to Wilson avenue, to Greene avenue, to Evergreen avenue, to Menahan street, to Bushwick avenue, to Grove street, to Goodwin place, to Greene avenue, to Broadway, to Ralph avenue, to Gates avenue, to Reid avenue, to Quincy street, to Stuyvesant avenue, to Lexington avenue, to Throop avenue, to Myrtle avenue, to Marcy avenue, to Flushing avenue, to Throop avenue, to Thornton street, to Broadway, to Debevoise street, to Graham avenue, to Cook street, to Broadway, to Lorimer street, to Boerum street, to Manhattan avenue, to McKibbin street, to Bushwick avenue, to McKibbin street, to White street, to Johnson avenue, to Bushwick place, to Meserole street, to Morgan avenue, to Johnson avenue, to the Kings-Queens county line, thence southeasterly along said line to its intersection with Greene avenue, the point of beginning.

70. SEVENTIETH DISTRICT. That part of the county of New York bounded by a line described as follows: Beginning at a point where West Ninety-seventh street intersects Central Park west, thence easterly through

Central Park on said street, to Fifth avenue, to East One Hundred-tenth street, to Madison avenue, to East One Hundred-eleventh street, to Fifth avenue, to East One Hundred-fifteenth street, to Madison avenue, to East One Hundred-twentieth street, to West One Hundred-twentieth street, to Mount Morris park west, to West One Hundred Twenty-fourth street, to Fifth avenue, to West One Hundred Twenty-sixth street, to Seventh avenue, to West One Hundred Twenty-seventh street, to Eighth avenue, to West One Hundred Twenty-ninth street, to St. Nicholas avenue, to West One Hundred Twenty-seventh street, to St. Nicholas terrace, to West One Hundred Thirtieth street, to Amsterdam avenue, to West One Hundred Twenty-ninth street, to Old Broadway, to West One Hundred Twenty-sixth street, to Amsterdam avenue, to West One Hundred Twenty-fifth street, to St. Clair place, thence along said place and said place extended to the New York-New Jersey line, thence southerly along said line to its intersection with West One Hundred Sixth street extended, thence along said street extended and said street, to West End avenue, to Broadway, to West One Hundred Eighth street, to Amsterdam avenue, to West One Hundred Seventh street, to Columbus avenue, to West One Hundred Fourth street, to Manhattan avenue, to West One Hundred-sixth street, to Central Park west, thence along Central Park west to its intersection with West Ninety-seventh street, the point of beginning.

71. SEVENTY-FIRST DISTRICT. That part of the county of New York bounded by a line described as follows: Beginning at a point where the One Hundred Forty-fifth street bridge intersects the New York-Bronx county line, thence westerly along said bridge to West One Hundred Forty-fifth street, to Lenox avenue, to West One Hundred Forty-sixth street, to Seventh avenue, to West One Hundred Forty-fifth street, to St. Nicholas avenue, to West One Hundred Forty-seventh street, to Con-

vent avenue, to West One Hundred Forty-sixth street, thence westerly along said street and said street extended, to the New York-New Jersey line, thence southerly along said line to its intersection with St. Clair place extended, thence easterly along said place extended and said place, to West One Hundred Twenty-fifth street, to Amsterdam avenue, to West One Hundred Twenty-sixth street, to Old Broadway, to West One Hundred Twenty-ninth street, to Amsterdam avenue, to West One Hundred Thirtieth street, to St. Nicholas terrace, to West One Hundred Twenty-seventh street, to St. Nicholas avenue, to West One Hundred Twenty-ninth street, to Eighth avenue, to West One Hundred Twenty-seventh street, to Seventh avenue, to West One Hundred Twenty-sixth street, to Fifth avenue, to East One Hundred Thirty-second street, to the New York-Central railroad bridge, thence northerly along said bridge to its intersection with the New York-Bronx county line, thence northerly along said line to its intersection with the One Hundred Forty-fifth street bridge, the point of beginning.

72. SEVENTY-SECOND DISTRICT. That part of the county of New York bounded by a line described as follows: Beginning at a point where the New York-Central railroad bridge intersects the New York-Bronx county line, thence southerly along said bridge to East One Hundred Thirty-second street, to Fifth avenue, to West One Hundred Twenty-fourth street, to Mount Morris park west, to West One Hundred Twentieth street, to East One Hundred Twentieth street, to Madison avenue, to East One Hundred Fifteenth street, to Fifth avenue, to East One Hundred Eleventh street, to Madison avenue, to East One Hundred Tenth street, to Fifth avenue, to East Ninety-sixth street, to Park avenue, to East Ninety-eighth street, to Madison avenue, to East Ninety-ninth street to Park avenue, to East One Hundredth street, to Third avenue, to East Ninety-seventh street, to Second avenue,

to East One Hundred Fifth street, to Third avenue, to East One Hundred Tenth street, to Second avenue, to East One Hundred Ninth street, to First avenue, to East One Hundred second street, thence along said street and said street extended, into the waters of the Harlem river, and through the waters of the Harlem river, and Hell Gate, to their intersection with the New York-Queens county line, thence along said line to the New York-Bronx county line, to its intersection with the New York-Central railroad bridge, the point of beginning; including all of Randall's Island, and Ward's Island.

74. SEVENTY-FOURTH DISTRICT. That part of the county of New York bounded by a line described as follows: Beginning at a point where West One Hundred Seventy-third street extended intersects the New York-Bronx county line, thence westerly along said street extended and said street to Audubon avenue, to West One Hundred Seventy-fifth street, to St. Nicholas avenue, to West One Hundred Eighty-third street, to Wadsworth avenue, to West One Hundred Eighty-second street, to Broadway, to West One Hundred Seventy-eighth street, to Washington avenue, to West One Hundred Seventy-sixth street, to Haven avenue, to West One Hundred Seventy-seventh street, to Cabrini boulevard, to West One Hundred Seventy-eighth street, to the George Washington bridge, thence westerly along said bridge to its intersection with the New York-New Jersey line, thence southerly along said line to its intersection with West One Hundred Forty-sixth street extended, thence easterly along said street extended and said street to Convent avenue, to West One Hundred Forty-seventh street, to St. Nicholas avenue, to West One Hundred Forty-fifth street, to Seventh avenue, to West One Hundred Forty-sixth street, to Lenox avenue, to West One Hundred Forty-fifth street, to the West One Hundred Forty-fifth street bridge, thence easterly along said bridge to its intersection with the

New York-Bronx county line, thence northerly along said line to its intersection with West One Hundred Seventy-third street extended, the point of beginning.

§ 3. The descriptions of the sixteenth, seventeenth, eighteenth, nineteenth, twenty-third, twenty-fifth, twenty-eighth and twenty-ninth senate districts contained in section one hundred twenty-four of such law are hereby repealed, and new descriptions of such districts are hereby inserted therein, in lieu thereof, to read, respectively, as follows:

16. SIXTEENTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Atlantic avenue intersects the Kings-Queens county line, thence westerly along said avenue to Crescent street, to Fulton street, to Euclid avenue, to Ridgewood avenue, to Chestnut street, to Dinsmore place, to Richmond street, to Fulton street, to Logan street, to Atlantic avenue, to Highland street, to Arlington avenue, to Linwood street, to Ridgewood avenue, to Elton street, to Arlington avenue, to Ashford street, to Fulton street, to Van Siclen avenue, to Liberty avenue, to Hendrix street, to Belmont avenue, to Barbey street, to New Lots avenue, to Riverdale avenue, to Georgia avenue, to New Lots avenue, to Hegeman avenue, to East Ninety-eighth street, to East New York avenue, to Ralph avenue, to Eastern parkway, to Rochester avenue, to Carroll street, to Ford street, to Crown street, to Utica avenue, to Lefferts avenue, to Schenectady avenue, to Rutland road, to East Forty-fifth street, to Winthrop street, to Albany avenue, to Clarkson avenue, to East Forty-second street, to Church avenue, to East Thirty-seventh street, to Snyder avenue, to Brooklyn avenue, to Cortelyou Road, to East Thirty-fifth street, to Avenue D. to Brooklyn avenue, to Foster avenue, to Albany avenue, to Avenue I, to East Thirty-eighth street, to Avenue K, to Flatbush avenue, to Lott place, to Harden street, to Flatlands avenue, to Schenec-

tady avenue, to Avenue K, to East Forty-eighth street, to Flatlands avenue, to Avenue K, to East Fifty-first street, to Flatlands avenue, thence along said avenue to its intersection with Paerdegat avenue south, thence along said avenue extended into the waters of the Paerdegat basin, thence through the waters of Paerdegat basin, Big channel, and Rockaway inlet to their intersection with the Kings-Queens county line, thence easterly and northerly along said line to its intersection with Atlantic avenue, the point of beginning.

17. SEVENTEENTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Willoughby avenue intersects the Kings-Queens county line, thence westerly along said avenue to Irving avenue, to Starr street, to Central avenue, to Troutman street, to Evergreen avenue, to Troutman street, to Bushwick avenue, to Myrtle avenue, to Ditmars street, to Broadway, to De Kalb avenue, to Reid avenue, to Kosciusko street, to Broadway, to Ralph avenue, to East New York avenue, to East Ninety-eighth street, to Hegeman avenue, to New Lots avenue, to Georgia avenue, to Riverdale avenue, to New Lots avenue, to Barbey street, to Belmont avenue, to Hendrix street, to Liberty avenue, to Van Siclen avenue, to Fulton street, to Ashford street, to Ridgewood avenue, to Cleveland street, to Jamaica avenue, to western boundary of Highland park, thence along said boundary to the Kings-Queens county line, thence westerly and northerly along said line to its intersection with Willoughby avenue, the point of beginning.

18. EIGHTEENTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Willoughby avenue intersects the Kings-Queens county line, thence westerly along said avenue to Irving avenue, to Starr street, to Central avenue, to Troutman street, to Evergreen avenue, to Troutman

street, to Bushwick avenue, to Myrtle avenue, to Ditmars street, to Broadway, to De Kalb avtnue, to Reid avenue, to Kosciusko street, to Broadway, to Ralph avenue, to Eastern parkway, to Rochester avenue, to Carroll street, to Ford street, to Crown street, to Utica avenue, to Lefferts avenue, to Troy avenue, to Carroll street, to Brooklyn avenue, to Lincoln place, to New York avenue, to St. John's place, to Brooklyn avenue, to Sterling place, to New York avenue, to Fulton street, to Marcy avenue, to Gerry street, to Harrison avenue, to Wallabout street, to Throop avenue, to Gerry street, to Broadway, to Leonard street, to Frost street, to Lorimer street, to Richardson street, to North Eleventh street, to Driggs avenue, to North Tenth street, to Bedford avenue, to North Eleventh street, thence westerly along said street and said street extended to the Kings-New York county line, thence northerly along said line to its intersection with the Kings-Queens county line, thence easterly and southerly along said line to its intersection with Willoughby avenue, the point of beginning.

19. NINETEENTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Schenectady avenue intersects Lefferts avenue, thence southerly along Schenectady avenue to Rutland road, to East Forty-fifth street, to Winthrop street, to Albany avenue, to Clarkson avenue, to East Forty-second street, to Church avenue, to East Thirty-seventh street, to Snyder avenue, to Brooklyn avenue, to Cortelyou road, to East Thirty-fifth street, to Avenue D, to Brooklyn avenue, to Foster avenue, to Albany avenue, to Avenue I, to East Thirty-eighth street, to Avenue K, to Flatbush avenue, to Flatlands avenue, to Coleman street, to Avenue P, to Kimball street, to Flatlands avenue, to Avenue N, to Kings highway, to Avenue O, to East Twenty-third street, to Kings highway, to East Twenty-second street, to Avenue O, to East Twenty-first

street, to Avenue N, to Coney Island avenue, to Avenue O, to Dahill road, to Sixtieth street, to McDonald avenue, to Avenue J, to Dahill road, to Avenue I, to McDonald avenue, to Foster avenue, to Ocean parkway, to Eighteenth avenue, to East Seventh street, to Ditmas avenue, to East Eighth street, to Avenue C, to East Fourth street, to Church avenue, to East Third street, to Albemarle road, to McDonald avenue, to Greenwood avenue, to East Fifth street, to Prospect expressway, to Greenwood avenue, to Prospect Park southwest, to Prospect Park west, to Grand Army plaza west, to Grand Army plaza east, to Vanderbilt avenue, to Park place, to Washington avenue, to St. Johns place, to Franklin avenue, to Washington avenue, to Lefferts avenue, to Brooklyn avenue, to Carroll street, to Troy avenue, to Lefferts avenue, thence easterly along said avenue, to its intersection with Schenectady avenue, the point of beginning.

23. **TWENTY-THIRD DISTRICT.** That part of the county of Kings bounded by a line described as follows: Beginning at a point where Bedford avenue intersects North Tenth street, thence southerly along said avenue to North Eighth street, to Driggs avenue, to North Fourth street, to Bedford avenue, to Metropolitan avenue, to Driggs avenue, to South Fourth street, to Marcy avenue, to the Brooklyn-Queens expressway, to Grand avenue, to Myrtle avenue, to Adelphi street, to the Brooklyn-Queens expressway, to Prince street, to Flatbush avenue, to Willoughby street, to Debevoise place, to De Kalb avenue, to Fulton street, to Hoyt street, to Fourth street, to Bond street and Bond street extended into the waters of the Gowanus canal, and through the waters of the Gowanus canal to their intersection with Second avenue extended, thence along said avenue extended and said avenue, to Sixth street, to Seventh avenue, to Union street, to Grand Army plaza west, to Grand Army plaza east, to Vanderbilt avenue, to Park place, to Washington avenue, to St.

John's place, to Franklin avenue, to Washington avenue, to Lefferts avenue, to Brooklyn avenue, to Lincoln place, to New York avenue, to St. John's place, to Brooklyn avenue, to Sterling place, to New York avenue, to Fulton street, to Marcy avenue, to Gerry street, to Harrison avenue, to Wallabout street, to Throop avenue, to Gerry street, to Broadway, to Leonard street, to Frost street, to Lorimer street, to Richardson street, to North Eleventh street, to Driggs avenue, to North Tenth street, thence westerly along said street to its intersection with Bedford avenue, the point of beginning.

25. **TWENTY-FIFTH DISTRICT.** That part of the county of Kings bounded by a line described as follows: Beginning at a point where North Eleventh street extended intersects the Kings-New York county line, thence easterly along said street extended and said street to Bedford avenue, to North Eighth street, to Driggs avenue, to North Fourth street, to Bedford avenue, to Metropolitan avenue, to Driggs avenue, to South Fourth street, to Marcy avenue, to the Brooklyn-Queens expressway, to Grand avenue, to Myrtle avenue, to Adelphi street, to the Brooklyn-Queens expressway, to Prince street, to Flatbush avenue, to Willoughby street, to Debevoise place, to De Kalb avenue, to Fulton street, to Hoyt street, to Fourth street, to Bond street and Bond street extended into the waters of the Gowanus canal, and through the waters of the Gowanus canal to their intersection with Second avenue extended, thence along said avenue extended and said avenue, to Sixth street, to Seventh avenue, to Prospect expressway, to Gowanus expressway, to its intersection with the waters of Gowanus creek, thence through the waters of Gowanus creek, Gowanus bay, and Upper Bay to their intersection with the Kings-New York county line, thence northerly along said line to its intersection with North Eleventh street extended, the point of beginning.

28. **TWENTY-EIGHTH DISTRICT.** *That part of the county of New York bounded by a line described as follows: Beginning at a point where West One Hundred Twelfth street extended intersects the New York-New Jersey line, thence along said street extended and said street to Broadway, to West One Hundred Thirty-third street, to Amsterdam avenue, to West One Hundred Fortieth street, to Convent avenue, to West One Hundred Forty-first street, to Eighth avenue, to West One Hundred Thirty-ninth street, to Seventh avenue, to West One Hundred Fifty-second street, thence along said street and said street extended to Harlem River Drive, to the Macombs Dam bridge, to its intersection with the New York-Bronx county line, thence southerly along said line to its intersection with the One Hundred Forty-fifth street bridge, thence along said bridge to Harlem River drive, to Fifth avenue, to East One Hundred Thirtieth street, to Madison avenue, to East One Hundred Twenty-ninth street, to Fifth avenue, to East One Hundred Twenty-sixth street, to Madison avenue, to East One Hundredth Nineteenth street, to Park avenue, to East One Hundred Seventeenth street, to Madison avenue, to East One Hundred Sixteenth street, to Park avenue, to East One Hundred Tenth street, to Fifth avenue, to West Ninety-sixth street, thence westerly through Central Park on West Ninety-sixth street to West Ninety-seventh street, to Central Park west, to West Ninety-second street, to Broadway, to West Eighty-sixth street, to Amsterdam avenue, to West Seventy-eighth street, to Broadway, to West Seventy-sixth street, to Amsterdam avenue, to West Seventieth street, to West End avenue, to West Seventy-first street, thence along said street and said street extended to its intersection with the New York-New Jersey line, thence northerly along said line to its intersection with West One Hundred Twelfth street extended, the point of beginning.*

29. **TWENTY-NINTH DISTRICT.** *That part of the county of New York bounded by a line described as fol-*

lows: Beginning at a point where West One Hundred Twelfth street extended intersects the New York-New Jersey line, thence along said street extended and said street to Broadway, to West One Hundred Thirty-third street, to Amsterdam avenue, to West One Hundred Fortieth street, to Convent avenue, to West One Hundred Forty-first street, to Eighth avenue, to West One Hundred Thirty-ninth street, to Seventh avenue, to West One Hundred Fifty-second street, thence along said street and said street extended to Harlem River Drive, to the Macombs Dam bridge, to its intersection with the New York-Bronx county line, thence northerly, westerly, southerly, and westerly to the New York-New Jersey line, thence southerly along said line to its intersection with West One Hundred Twelfth street extended, the point of beginning.

§ 4. In order to provide for an orderly election of members of the legislature and in recognition of the constitutional mandate that legislative districts shall be created by law subject to judicial review under such reasonable regulations as the legislature may prescribe, it is hereby determined and declared that no order of the court invalidating this act or part thereof shall be entered in a manner which will deprive the legislature of an opportunity to discharge its constitutional mandate. In any proceeding for judicial review of the provisions of this act, the determination of the court shall be embodied in a tentative order which shall become final thirty days after service of copies thereof upon the parties unless the court shall, in the interval, on application of any party, resettle its order.

§ 5. If any part or provision of this act relating to any senate or assembly district shall be adjudged invalid by a court of competent jurisdiction, such judgment shall: (1) be confined in its operation to the part or provision of this act or the district or districts described herein

directly involved in the controversy in which such judgment shall have been rendered, and (2) not affect or impair the validity of the remaining parts, provisions or districts described in this act or elsewhere.

§ 6. a. This act shall be liberally construed to effectuate the purposes thereof and to apportion and district this state in compliance with constitutional requirements.

b. It is intended that the apportionment and districting provided for in this act result in the creation of districts containing equal population. It is also intended that no senate district shall include any of the area included within the description of any other senate district. It is further intended that no assembly district shall include any of the area included within the description of any other assembly district.

§ 7. a. If the districts described in this act do not carry out the purposes thereof, because of unintentional omissions; duplications; overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards, or other divisions thereof, or of their boundary lines; street closings, changes in names of streets, or other changes of public places; alteration of the boundary or courses of waters or waterways, filling in of lands under water, accretion or other changes in shorelines; or alteration of courses, rights of way, or lines of public utilities or other conditions, then the secretary of state, at the request of any person aggrieved thereby or candidate affected thereby, shall, by order, correct such omissions, overlaps, erroneous nomenclature, or other defects in the description of districts so as to accomplish the purposes and objectives of this act.

b. In promulgating such orders, the secretary of state, in addition to achieving equality in the population of districts and insuring that all areas of the state are com-

pletely and accurately encompassed in such districts, shall be guided by the following standards:

(1) Gaps in the description of any district shall be completed in a manner which results in a total description of that district in a manner which is consonant with the description of adjacent districts and results in complete contiguity of districts.

(2) Areas of the state included within the descriptions of more than one district shall be allocated to the district having the lowest population.

(3) Areas of the state not included within the descriptions of any district shall be allocated to the adjacent district having the lowest population.

(4) In the event that the area subject to corrected description of allocation as provided in paragraphs one, two or three of this subdivision is of such size or contains such population that its inclusion as a unit in any district would result in substantial disparity in the size, shape or population of such district, then the secretary of state may allocate portions of such area to two or more districts.

(5) In any allocation of area or correction of descriptions made pursuant to this section, the secretary of state shall, consistent with the foregoing standards, preserve the contiguity and compactness of districts and avoid the unnecessary division of political subdivisions.

c. Copies of such orders shall be filed by the secretary of state in his own office and in the office of the affected boards of election. In addition, a copy of such order shall be served upon the person or candidate, if any, who instituted the application for such an order. The secretary of state may adopt reasonable rules regulating the procedure for applications for orders under this section in the manner of serving and filing any notice or copy of orders relating thereto.

d. Upon the filing of such an order, the description of any affected district shall be deemed to have been corrected in the manner provided in such order to the full extent as if such correction had been contained in the original description set forth in this act.

§ 8. The senate and assembly districts of this state, as existing immediately prior to the effective date of this act, shall continue to be the senate and assembly districts of the state for the purpose of filling vacancies in the office of senator or assemblyman at any special election held prior to the general election of the year nineteen hundred seventy-four.

§ 9. The senate and assembly districts of this state, from and after the effective date of this act, shall be the senate and assembly districts of the state for the purpose of designating and nominating candidates for such offices.

§ 10. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 11. This act shall take effect immediately.

STATE OF NEW YORK

S. 2

A. 2

Extraordinary Session

SENATE—ASSEMBLY

May 29, 1974

IN SENATE—Introduced by COMMITTEE ON RULES
—(at request of the Joint Committee on Reapportionment)—read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY—Introduced by COMMITTEE ON RULES—(at request of the Joint Committee on Reapportionment)—read once and referred to the Committee on Rules

AN ACT

To amend the state law, in relation to certain congressional districts and to repeal the descriptions relating to such districts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The descriptions of the twelfth, thirteenth, fourteenth and fifteenth congressional districts contained in section one hundred eleven of the state law are hereby repealed and new descriptions of such districts are hereby inserted therein, in lieu thereof, to read, respectively, as follows:

12. TWELFTH CONGRESSIONAL DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Manhattan avenue

EXPLANATION—Matter in *italics* is new; matter in brackets [] is old law to be omitted.

intersects the Kings-Queens county line, thence southerly along said avenue to Calyer street, to Leonard street, to Richardson street, to the Brooklyn-Queens expressway, to Metropolitan avenue, to Lorimer street, to Ten Eyck street, to Leonard street, to Boerum street, to Lorimer street, to Broadway, to Flushing avenue, to Throop avenue, to Hancock street, to Sumner avenue, to Halsey street, to Throop avenue, to Fulton street, to Albany avenue, to Herkimer street, to Troy avenue, to Eastern parkway, to Schenectady avenue, to Crown street, to Rochester avenue, to East New York avenue, to East Ninety-eighth street, to Blake avenue, to Hopkinson avenue, to Livonia avenue, to Junius street, to Dumont avenue, to Pennsylvania avenue, to Blake avenue, to Miller avenue, to Belmont avenue, to Wyona street, to Liberty avenue, to New Jersey avenue, to Jamaica avenue, to Miller avenue, to Highland boulevard, thence easterly along said boulevard to its intersection with the Kings-Queens county line, thence northerly and westerly along said line to its intersection with Manhattan avenue, the point of beginning.

13. THIRTEENTH CONGRESSIONAL DISTRICT.

That part of the county of Kings bounded by a line described as follows: Beginning at a point where Ocean avenue intersects Parkside avenue, thence southerly along Ocean avenue to Woodruff avenue, to East Twenty-first street, to Caton avenue, to Flatbush avenue, to Martense street, to Bedford avenue, to Snyder avenue, to Flatbush avenue, to Stephens court, to East Twenty-third street, to Foster avenue, to Coney Island avenue, to Avenue H, to East Eighth street, to Foster avenue, to Ocean parkway, to Avenue I, to East Seventh street, to Avenue J, to Ocean parkway, to Avenue M, to East Ninth street, to Avenue N, to East Seventh street, to Avenue O, to Ocean parkway, to Quentin road, to East Seventh street, to Avenue P, to East Eighth street, to Quentin road, to East Ninth street, to Avenue P, to East Tenth street, to Avenue O, to Coney

Island avenue, to Avenue P, to East Nineteenth street, to Avenue R, to East Twenty-third street, to Gravesend Neck road, to Bedford avenue, to Avenue Z, to Nostrand avenue, to Shore parkway, to Flatbush avenue, thence southerly along said avenue, and said avenue extended into the waters of Rockaway inlet, thence through the waters of Rockaway inlet, the Atlantic ocean, Lower Bay, Gravesend Bay, and Coney Island creek to their intersection with Cropsey avenue, thence northerly along said avenue to Bay Fiftieth street, to Stillwell avenue, to Eighty-fourth street, to Twenty-fourth avenue, to Eighty-fifth street, to Twentieth avenue, to Eighty-sixth street, to Nineteenth avenue, to Seventy-third street, to Twentieth avenue, to Seventy-second street, to Nineteenth avenue, to Bay Ridge avenue, to Seventeenth avenue, to Sixty-seventh street, to Sixteenth avenue, to Sixty-third street, to Seventeenth avenue, to Sixty-fourth street, to Eighteenth avenue, to Sixty-third street, to Nineteenth avenue, to Fifty-fifth street, to Seventeenth avenue, to Fifty-ninth street, to New Utrecht avenue, to Fifty-eighth street, to Fort Hamilton parkway, to Fifty-second street, to Twelfth avenue, to Forty-eighth street, to New Utrecht avenue, to Forty-seventh street, to Twelfth avenue, to Forty-third street, to Thirteenth avenue, to Thirty-eighth street, to Fourteenth avenue, to Old New Utrecht road, to Thirty-sixth street, to Church avenue, to Dahill road, to Caton avenue, to East Fifth street, to Prospect expressway, to Greenwood avenue, to Prospect Park southwest, to Park circle, to Parkside avenue, thence easterly along said avenue to its intersection with Ocean avenue, the point of beginning.

14. FOURTEENTH CONGRESSIONAL DISTRICT.

That part of the county of Kings bounded by a line described as follows: Beginning at a point where Manhattan avenue intersects the Kings-Queens county line, thence southerly along said avenue to Calyer street, to Leonard street, to Richardson street, to the Brooklyn-Queens ex-

pressway, to Metropolitan avenue, to Lorimer street, to Ten Eyck street, to Leonard street, to Boerum street, to Lorimer street, to Broadway, to Flushing avenue, to Throop avenue, to Hancock street, to Sumner avenue, to Halsey street, to Throop avenue, to Fulton street, to Albany avenue, to Herkimer street, to Troy avenue, to Eastern parkway, to New York avenue, to Malbone street, to Clover road, to Empire boulevard, to Washington avenue, to Eastern parkway, to Classon avenue, to Park place, to Vanderbilt avenue, to Sterling place, to Butler street, to Fourth avenue, to Prospect expressway, to Gowanus expressway, to Hamilton avenue, thence along said avenue and said avenue extended to its intersection with the Kings-New York county line, thence northerly along said line to its intersection with the Kings-Queens county line, thence easterly along said line to its intersection with Manhattan avenue, the point of beginning.

15. FIFTEENTH CONGRESSIONAL DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Parkside avenue intersects Ocean avenue, thence westerly along Parkside avenue, to Park circle, to Prospect Park southwest, to Greenwood avenue, to Prospect expressway, to East Fifth street, to Caton avenue, to Dahill road, to Church avenue, to Thirty-sixth street, to Old New Utrecht road, to Fourteenth avenue, to Thirty-eighth street, to Thirteenth avenue, to Forty-third street, to Twelfth avenue, to Forty-seventh street, to New Utrecht avenue, to Forty-eighth street, to Twelfth avenue, to Fifty-second street, to Fort Hamilton parkway, to Fifty-eighth street, to New Utrecht avenue, to Fifty-ninth street, to Seventeenth avenue, to Fifty-fifth street, to Nineteenth avenue, to Sixty-third street, to Eighteenth avenue, to Sixty-fourth street, to Seventeenth avenue, to Sixty-third street, to Sixteenth avenue, to Sixty-seventh street to Seventeenth avenue, to Bay Ridge avenue, to Nineteenth avenue, to Seventy-second

street, to Twentieth avenue, to Seventy-third street, to Nineteenth avenue, to Sixty-sixth street, to Twentieth avenue, to Eighty-fifth street, to Twenty-fourth avenue, to Eighty-fourth street, to Stillwell avenue, to Bay Fiftieth street, to Cropsey avenue, thence southerly along said avenue to its intersection with the waters of Coney Island creek, thence through the waters of Coney Island Creek, to their intersection with the Kings-New York county Gravesend Bay, Lower Bay, the Narrows, and Upper Bay line, thence northerly and easterly along said line to its intersection with Hamilton avenue extended, thence easterly along said avenue extended and said avenue to Gowanus expressway, to Prospect expressway, to Fourth avenue, to Butler street, to Sterling place, to Vanderbilt avenue, to Park place, to Classon avenue, to Eastern parkway, to Washington avenue, to Empire avenue, to Ocean avenue, thence southerly along said avenue to its intersection with Parkside avenue, the point of beginning.

§ 2. a. This act shall be liberally construed to effectuate the purposes thereof and to apportion and district this state in compliance with constitutional requirements and to satisfy the objections of the United States Department of Justice set forth in a determination dated April first, nineteen hundred seventy-four. In any proceeding for judicial review of the provisions of this act, the determination of the court shall be embodied in a tentative order which shall become final thirty days after service of copies thereof upon the parties unless the court shall, in the interval, on application of any party, resettle its order.

b. It is intended that the apportionment and districting provided for in this act result in the creation of districts containing equal population. It is also intended that no district shall include any of the area included within the description of any other district.

§ 3. a. If the districts described in this act do not carry out the purposes thereof, because of unintentional omis-

sions; duplications; overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards, or other divisions thereof, or of their boundary lines; street closings, changes in names of streets, or other changes of public places; alteration of the boundary or courses of waters or waterways, filling in of lands under water, accretion or other changes in shorelines or alteration of courses, rights of way, or lines of public utilities or other conditions, then the secretary of state, at the request of any person or candidate, aggrieved thereby, shall, by order, correct such omissions, overlaps, tion of districts so as to accomplish the purposes and erroneous nomenclature, or other defects in the descriptive objectives of this act.

b. In promulgating such orders, the secretary of state, in addition to achieving equality in the population of districts and insuring that all areas of the state are completely and accurately encompassed in such districts, shall be guided by the following standards:

(1) Gaps in the description of any district shall be completed in a manner which results in a total description of that district in a manner which is consonant with the description of adjacent districts and results in complete contiguity of districts.

(2) Areas of the state included within the descriptions of more than one district shall be allocated to the district having the lowest population.

(3) Areas of the state not included within the descriptions of any district shall be allocated to the adjacent district having the lowest population.

(4) In the event that the area subject to corrected description or allocation as provided in paragraphs one, two or three of this subdivision is of such size or contains such population that its inclusion as a unit in any district would

result in substantial disparity in the size, shape or population of such district, then the secretary of state may allocate portions of such area to two or more districts.

(5) In any allocation of area or correction of descriptions made pursuant to this section, the secretary of state shall, consistent with the foregoing standards, preserve the contiguity and compactness of districts and avoid the unnecessary division of political subdivisions.

c. Copies of such orders shall be filed by the secretary of state in his own office and in the office of the affected boards of election. In addition, a copy of such order shall be served upon the person or candidate, if any, who instituted the application for such an order. The secretary of state may adopt reasonable rules regulating the procedure for applications for orders under this section in the manner of serving and filing any notice or copy of orders relating thereto.

d. Upon the filing of such an order, the description of any affected district shall be deemed to have been corrected in the manner provided in such order to the full extent as if such correction had been contained in the original description set forth in this act.

§ 4. If any part or provision of this act relating to any congressional district shall be adjudged invalid by a court of competent jurisdiction, such judgment shall: (1) be confined in its operation to the part or provision of this act or the district or districts described herein directly involved in the controversy in which such judgment shall have been rendered, and (2) not affect or impair the validity of the remaining parts, provisions or districts described in this act or elsewhere.

§ 5. The congressional districts of this state, as existing immediately prior to the effective date of this act, shall continue to be the congressional districts of the state for

the purpose of filling vacancies in the office of representative in congress at any special election held prior to the general election of the year nineteen hundred seventy-four.

§ 6. The congressional districts of this state, from and after the effective date of this act, shall be the congressional districts of the state for the purpose of designating and nominating candidates for representatives in congress, and for electing district delegates and alternate district delegates to national party conventions.

§ 7. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 8. This act shall take effect immediately.

STATE OF NEW YORK

S. 3

A. 3

SENATE—ASSEMBLY

Extraordinary Session

May 29, 1974

IN SENATE—Introduced by COMMITTEE ON RULES
—(at request of the Joint Committee on Reapportionment)—read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY—Introduced by COMMITTEE ON RULES—(at request of the Joint Committee on Reapportionment)—read once and referred to the Committee on Rules

AN ACT

To amend the Reapportionment Compliance Act of nineteen hundred seventy-four, in relation to the descriptions of certain senate districts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The descriptions of the sixteenth and seventeenth senate districts of section three of a chapter of the laws of nineteen hundred seventy-four, entitled "AN ACT" to amend the state law, in relation to certain assembly and senate districts and to repeal the descriptions relating to such districts", constituting the Reapportionment Compliance Act of nineteen hundred seventy-four, are hereby amended to read, respectively, as follows:

16. SIXTEENTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Begin-

EXPLANATION—Matter in *italics* is new; matter in brackets [] is old law to be omitted.

ning at a point where Atlantic avenue intersects the Kings-Queens county line, thence westerly along said avenue to Crescent street, to Fulton street, to Euclid avenue, to Ridgewood avenue, to Chestnut street, to Dinsmore place, to Richmond street, to Fulton street, to Logan street, to Atlantic avenue, to Highland street, to Arlington avenue, to Linwood street, to Ridgewood avenue to Elton street, to Arlington avenue, to Ashford street, *to Ridgewood avenue to Cleveland street, to Jamaica avenue, to the western boundary of Highland Park, thence northerly along said boundary to its intersection with the Kings-Queens county line, thence westerly along said line to its intersection with Interborough parkway, thence along said parkway to Highland boulevard, to Bushwick avenue, to Jamaica avenue, to Pennsylvania avenue, to Fulton street, to Van Sielen avenue, to Liberty avenue, to Hendrix street, to Belmont avenue, to Barbey street, to New Lots avenue, to Riverdale avenue, to Georgia avenue, to New Lots avenue, to Hegeman avenue[, to East Ninety-eighth street, to East New York avenue, to Ralph avenue, to Eastern parkway, to Rochester avenue, to Carroll street, to Ford street, to Crown street, to Utica avenue[, to Church avenue, to Rockaway parkway, to Willmohr street, to East Ninety-eighth street, to Rutland road, to Remsen avenue, to East New York avenue, to Lefferts avenue, to Schenectady avenue, to Rutland road, to East Forty-fifth street, to Winthrop street, to Albany avenue, to Clarkson avenue, to East Forty-second street, to Church avenue, to East Thirty-seventh street, to Snyder avenue, to Brooklyn avenue, to Cortelyou road, to East Thirty-fifth street, to Avenue D, to Brooklyn avenue, to Foster avenue, to Albany avenue, to Avenue I, to East Thirty-eighth street, to Avenue K, to Flatbush avenue, to Lott place, to Harden street, to Flatlands avenue, to Schenectady avenue, to Avenue K, to East Forty-eighth street, to Flatlands avenue, to Avenue K, to East Fifty-first street, to Flatlands avenue, thence along said avenue to its inter-*

section with Paerdegat avenue south, thence along said avenue extended into the waters of the Paerdegat basin, thence through the waters of Paerdegat basin, Big channel, and Rockaway inlet to their intersection with the Kings-Queens county line, thence easterly and northerly along said line to its intersection with Atlantic avenue, the point of beginning.

17. SEVENTEENTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Willoughby avenue intersects the Kings-Queens county line, thence westerly along said avenue to Irving avenue, to Starr street, to Central avenue, to Troutman street, to Evergreen avenue, to Troutman street, to Bushwick avenue, to Myrtle avenue, to Ditmars street, to Broadway, to De Kalb avenue, to Reid avenue, to Kosciusko street, to Broadway, to Ralph avenue[, to East New York avenue], *to Eastern parkway, to Rochester avenue, to Carroll street, to Ford street, to Crown street, to Utica avenue, to East New York avenue, to Remsen avenue, to Rutland road, to East Ninety-eighth street, to Willmohr street, to Rockaway parkway, to Church avenue, to East Ninety-eighth street, to Hegeman avenue, to New Lots avenue, to Georgia avenue, to Riverdale avenue, to New Lots avenue, to Barbey street, to Belmont avenue, to Hendrix street, to Liberty avenue, to Van Sielen avenue, to Fulton street, [to Ashford street, to Ridgewood avenue, to Cleveland street, to Jamaica avenue, to the western boundary of Highland park, thence along said boundary to the Kings-Queens county line, thence westerly and] to Pennsylvania avenue, to Jamaica avenue, to Bushwick avenue, to Highland boulevard, to Interborough parkway, to its intersection with the Kings-Queens county line, thence northerly along said line to its intersection with Willoughby avenue, the point of beginning.*

§ 2. This act shall take effect immediately.

S. 6

STATE OF NEW YORK

SENATE—ASSEMBLY

Extraordinary Session

May 29, 1974

A. 6

IN SENATE—Introduced by COMMITTEE ON RULES
—(at request of the Joint Committee on Reapportionment)—read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY—Introduced by COMMITTEE ON RULES—(at request of the Joint Committee on Reapportionment)—read once and referred to the Committee on Rules

AN ACT

To amend the Reapportionment Compliance Act of nineteen hundred seventy-four, in relation to the descriptions of certain assembly and senate districts and to repeal the descriptions relating to such districts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The descriptions of the forty-fourth, forty-eighth, fifty-second, seventieth, and seventy-first assembly districts of section two of a chapter of the laws of nineteen hundred seventy-four, entitled "AN ACT to amend the state law, in relation to certain assembly and senate districts and to repeal the descriptions relating to such districts, constituting the Reapportionment Compliance Act of nineteen hundred seventy-four, are hereby REPEALED, and new descriptions of such districts are hereby inserted therein, in lieu thereof, to read, respectively, as follows:

44. FORTY-FOURTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Parkside avenue intersects Ocean avenue, thence along Ocean avenue to Woodruff avenue, to East Twenty-first street, to Caton avenue, to Flatbush avenue, to Martense street, to Bedford avenue, to Snyder avenue, to Flatbush avenue, to Stephens court, to East Twenty-third street, to Farragut road, to East Twenty-second street, to Glenwood road, to East Nineteenth street, to Foster avenue, to East Eighteenth street, to Glenwood road, to Coney Island avenue, to Webster avenue, to East Eighth street, to Eighteenth avenue, to Coney Island avenue, to Ditmas avenue, to East Fifth street, to Church avenue, to East Third street, to Cortel-you road, to McDonald avenue, to Ditmas avenue, to Dahill road, to Thirty-seventh street, to Fifteenth avenue, to Dahill road, to Caton avenue, to McDonald avenue, to Greenwood avenue, to East Second street, to Caton avenue, to East Fifth street, to Prospect expressway, to Greenwood avenue, to Prospect park southwest, to Prospect park west, to Sixth street, to Eighth avenue, to Third street, to Sixth avenue, to Union street, to Seventh avenue, to Berkeley place, to Sixth avenue, to Lincoln place, to Seventh avenue, to St. Johns place, to Eighth avenue, to Flatbush avenue, to Sterling place, to Vanderbilt avenue, to Grand Army Plaza east, to Eastern Parkway, to New York avenue, to Malbone street, to Clove road, to Empire boulevard, to Nostrand avenue, to Montgomery street, to Rogers avenue, to Empire boulevard, to Ocean avenue, thence along said avenue to its intersection with Parkside avenue, the point of beginning.

48. FORTY-EIGHTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Coney Island avenue intersects Ditmas avenue, thence along Coney Island avenue to Ditmas avenue, to East Eighth street, to Webster ave-

nue, to Coney Island avenue, to Glenwood road, to East Eighteenth street, to Foster avenue, to East Nineteenth street, to Glenwood road, to Ocean avenue, to Avenue I, to East Seventeenth street, to Avenue H, to East Fifteenth street, to Avenue J, to Coney Island avenue, to Avenue M, to East Tenth street, to Avenue P, to East Ninth street, to Quentin road, to East Eighth street, to Avenue P, to East Seventh street, to Quentin road, to Ocean parkway, to Avenue P, to East Fifth street, to Avenue O, to East Third street, to Avenue P, to East Second street, to Quentin road, to McDonald avenue, to Avenue O, to Dahill road, to Avenue P, to West Fifth street, to Sixty-fifth street, to Bay parkway, to Sixty-second street, to Twenty-first avenue, to Fifty-ninth street, to Nineteenth avenue, to Fifty-fifth street, to Seventeenth avenue, to Fifty-ninth street, to New Utrecht avenue, to Fifty-eighth street, to Fort Hamilton parkway, to Fifty-second street, to Twelfth avenue, to Forty-eighth street, to New Utrecht avenue, to Forty-seventh street, to Twelfth avenue, to Forty-third street, to Thirteenth avenue, to Thirty-seventh street, to Fourteenth avenue, to Thirty-ninth street, to Fifteenth avenue, to Thirty-eighth street, to Dahill road, to Ditmas avenue, to McDonald avenue, to Cortelyou road, to East Third street, to Church avenue, to East Fifth street, to Ditmas avenue, thence along said avenue to its intersection with Coney Island avenue, the point of beginning.

52. FIFTY-SECOND DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where the Kings-New York county line intersects Cadman plaza west extended, thence southerly along said line into the waters of Upper Bay, and through the waters of Upper Bay and Gowanus Bay to their intersection with Thirty-ninth street extended, thence along said street extended and said street, to Second avenue, to Thirty-sixth street, to Gowanus expressway, to Eighteenth street, to Fourth avenue, to Tenth street, to

Third avenue, to Eighth street, to Fourth avenue, to Seventh street, to Fifth avenue, to Fifth street, to Sixth avenue, to Sixth street, to Seventh avenue, to Fifth street, to Eighth avenue, to Third street, to Sixth avenue, to Union street, to Seventh avenue, to Berkeley place, to Sixth avenue to Lincoln place, to Seventh avenue, to St. Johns place, to Eighth avenue, to Flatbush avenue, to Sterling place, to Vanderbilt avenue, to Atlantic avenue, to Fifth avenue, to Warren street, to Fourth avenue, to Douglass street, to Third avenue, to Butler street, to Nevins street, to Baltic street, to Bond street, to Douglas street, to Hoyt street, to Dean street, to Smith street, to Bergen street, to Court street, to State street, to Boerum place, to Schermerhorn street, to Court street, to Cadman plaza west, to Orange street, to Henry street, to Cranberry street, to Cadman plaza west, to Henry street, to Poplar street, to Hicks street, to the Brooklyn-Queens expressway, to Cadman plaza west, thence northwesterly along Cadman plaza west, and Cadman plaza west extended to its intersection with the Kings-New York county line, the point of beginning.

70. SEVENTIETH DISTRICT. That part of the county of New York bounded by a line described as follows: Beginning at a point where West Ninety-seventh street intersects Central Park west, thence easterly through Central Park on said street, to Fifth avenue, to East One Hundred-tenth street, to Madison avenue, to East One Hundred-eleventh street, to Fifth avenue, to East One Hundred-fifteen street, to Madison avenue, to East One Hundred-twentieth street, to West One Hundred-twentieth street, to Mount Morris park west, to West One Hundred Twenty-second street, to Seventh avenue, to West One Hundred Twenty-third street, to Eighth avenue, to West One Hundred Twenty-seventh street, to Convent avenue, to West One Hundred Twenty-ninth street, to Amsterdam avenue, to West One Hundred

Thirty-fourth street, to Broadway, to West One Hundred Twenty-fifth street, to St. Clair place, thence along said place and said place extended to the New York-New Jersey line, thence southerly along said line to its intersection with West One Hundred Sixth street extended, thence along said street extended and said street, to West End avenue, to Broadway, to West One Hundred Eighth street, to Amsterdam avenue, to West One Hundred Seventh street, to Columbus avenue, to West One Hundred Fourth street, to Manhattan avenue, to West One Hundred-sixth street, to Central Park west, thence along Central Park west to its intersection with West Ninety-seventh street, the point of beginning.

71. SEVENTY-FIRST DISTRICT. That part of the county of New York bounded by a line described as follows: Beginning at a point where the One Hundred Forty-fifth street bridge intersects the New York-Bronx county line, thence westerly along said bridge to West One Hundred Forty-fifth street, to Lenox avenue, to West One Hundred Forty-sixth street, to Seventh avenue, to West One Hundred Forty-fifth street, to St. Nicholas avenue, to West One Hundred Forty-seventh street, to Convent avenue, to West One Hundred Forty-sixth street, thence westerly along said street and said street extended, to the New York-New Jersey line, thence southerly along said line to its intersection with St. Clair place extended, thence easterly along said place extended and said place, to West One Hundred Twenty-fifth street, to Broadway, to West One Hundred Thirty-fourth street, to Amsterdam avenue, to West One Hundred Twenty-ninth street, to Convent avenue, to West One Hundred Twenty-seventh street, to Eighth avenue, to West One Hundred Twenty-third street, to Seventh avenue, to West One Hundred Twenty-second street, to Mount Morris park west, to West One Hundred Twenty-fourth street, to Fifth avenue, to East One Hundred and Thirty-second street, to the New York-Central

railroad bridge, thence northerly along said bridge to its intersection with the New York-Bronx county line, thence northerly along said line to its intersection with the One Hundred Forty-fifth street bridge, the point of beginning.

§ 2. The descriptions of the eighteenth and twenty-third senate districts of section three of such chapter are hereby **REPEALED** and new descriptions of such districts are hereby inserted therein, in lieu thereof, to read, respectively, as follows:

18. EIGHTEENTH DISTRICT. That part of the county of Kings bounded by a line described as follows: Beginning at a point where Willoughby avenue intersects the Kings-Queens county line, thence westerly along said avenue to Irving avenue, to Starr street, to Central avenue, to Troutman street, to Evergreen avenue, to Troutman street, to Bushwick avenue, to Myrtle avenue, to Ditmars street, to Broadway, to De Kalb avenue, to Reid avenue, to Kosciusko street, to Broadway, to Ralph avenue, to Eastern parkway, to Rochester avenue, to Carroll street, to Ford street, to Crown street, to Utica avenue, to Lefferts avenue, to Troy avenue, to Carroll street, to Brooklyn avenue, to Lincoln place, to Albany avenue, to Sterling place, to New York avenue, to Fulton street, to Marcy avenue, to Hopkins street, to Tompkins street, to Flushing avenue, to Gerry street, to Harrison avenue, to Wallabout street, to Throop avenue, to Lorimer avenue, to Stagg street, to Leonard street, to Skillman avenue, to Lorimer street, to Jackson street, to Leonard street, to Frost street, to Lorimer street, to Richardson street, to North Eleventh street, to Driggs avenue, to North Tenth street, to Bedford avenue, to North Eleventh street, thence westerly along said street and said street extended to the Kings-New York county line, thence northerly along said line to its intersection with the Kings-Queens county line, thence easterly and southerly along said line to its intersection with Willoughby avenue, the point of beginning.

23. *TWENTY-THIRD DISTRICT.* That part of the county of Kings bounded by a line described as follows: Beginning at a point where Bedford avenue intersects North Tenth street, thence southerly along said avenue to North Eighth street, to Driggs avenue, to North Fourth street, to Bedford avenue, to Metropolitan avenue, to Driggs avenue, to South Fourth street, to Marcy avenue, to the Brooklyn-Queens expressway, to Grand avenue, to Myrtle avenue, to Adelphi street, to the Brooklyn-Queens expressway, to Prince street, to Flatbush avenue, to Wiloughby street, to Debevoise place, to De Kalb avenue, to Fulton street, to Hoyt street, to Fourth street, to Bond street and Bond street extended into the waters of the Gowanus canal, and through the waters of the Gowanus canal to their intersection with Second avenue extended, thence along said avenue extended and said avenue, to Sixth street, to Seventh avenue, to Union street, to Grand Army plaza west, to Grand Army plaza east, to Vanderbilt avenue, to Park place, to Washington avenue, to St. John's place, to Franklin avenue, to Washington avenue, to Lefferts avenue, to Brooklyn avenue, to Lincoln place, to Albany avenue, to Sterling place, to New York avenue, to Fulton street, to Marcy avenue to Hopkins street, to Tompkins avenue, to Flushing avenue, to Gerry street, to Harrison avenue, to Wallabout street, to Throop avenue, to Lorimer street, to Stagg street, to Leonard street, to Skillman avenue, to Lorimer street, to Jackson street, to Leonard street, to Frost street, to Lorimer street, to Richardson street, to North Eleventh street, to Driggs avenue, to North Tenth street, thence westerly along said street to its intersection with Bedford avenue, the point of beginning.

§ 3. This act shall take effect immediately.

STATE OF NEW YORK

S. 11

A. 11

SENATE—ASSEMBLY

Extraordinary Session
May 30, 1974

IN SENATE—Introduced by COMMITTEE ON RULES
—(at request of the Joint Committee on Reapportionment)—read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY—Introduced by COMMITTEE ON RULES—(at request of the Joint Committee on Reapportionment)—read once and referred to the Committee on Rules

AN ACT

To amend the Reapportionment Compliance Act of nineteen hundred seventy-four, in relation to the description of the twenty-fifth senate district and to repeal the description relating to such district

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The description of the twenty-fifth senate district of section three of a chapter of the laws of nineteen hundred seventy-four, entitled "AN ACT to amend the state law, in relation to certain assembly and senate districts and to repeal the descriptions relating to such districts", constituting the Reapportionment Compliance Act of nineteen hundred seventy-four, is hereby REPEALED and a new description of such district is hereby inserted therein, in lieu thereof, to read as follows:

25. *TWENTY-FIFTH DISTRICT.* That part of the county of New York bounded by a line described as follows: Beginning at a point where the waters of the East river intersect East Fifteenth street extended, thence along said street extended and said street, to Franklin

D. Roosevelt drive, to East Fourteenth street, to Avenue A, to East Seventh street, to First avenue, to Houston street, to Eldridge street, to Stanton street, to Forsyth street, to Houston street, to Second avenue, to East First street, to Bowery, to Kenmore street, to Elizabeth street, to Broome street, to Bowery, to Park Row, to Pearl street, to Madison street, to Frankfurt street, to Gold street, to Fulton street, to South street, and thence southwesterly from South street to the waters of Upper Bay. Thence, southerly and easterly through the waters of Upper Bay to the waters of the East river, thence easterly and northerly through said waters to East Fifteenth street extended, the point of beginning, including all of Governors Island, Ellis Island and Liberty Island; and that part of the county of Kings bounded by a line described as follows: Beginning at a point where North Eleventh street extended intersects the Kings-New York county line, thence easterly along said street extended and said street to Bedford avenue, to North Eighth street, to Driggs avenue, to North Fourth street to Bedford avenue, to Metropolitan avenue, to Driggs avenue, to South Fourth street, to Marcy avenue, to the Brooklyn-Queens expressway, to Grand avenue, to Myrtle avenue, to Adelphi street, to the Brooklyn-Queens expressway, to Prince street, to Flatbush avenue, to Willoughby street, to Debevoise place, to De Kalb avenue, to Fulton street, to Hoyt street, to Fourth street, to Bond street and Bond street extended into the waters of the Gowanus canal, and through the waters of the Gowanus canal to their intersection with Second avenue extended, thence along said avenue extended and said avenue, to Sixth street, to Seventh avenue, to Prospect expressway, to Gowanus expressway, to its intersection with the waters of Gowanus creek, Gowanus bay, and Upper bay to their intersection with the Kings-New York county line, thence northerly along said line to its intersection with North Eleventh street extended, the point of beginning.

§ 2. This act shall take effect immediately.

**OVERSIZE FOLDOUT(S) FOUND HERE IN
THE PRINTED EDITION OF THIS VOLUME
ARE FOUND FOLLOWING THE LAST PAGE
OF TEXT IN THIS MICROFICHE EDITION.**

SEE FOLDOUT NO 1 & 2

Plaintiffs' Exhibit 3

INTERIM REPORT

of the

JOINT COMMITTEE ON REAPPORTIONMENT

* * * * *

INTRODUCTION

Sections 4 and 5 of the Federal Voting Rights Act of 1965, as amended in 1970, 42 U.S.C. §§ 1973b, 1973c, provide that in any state or political subdivision thereof which utilizes a test as a precondition for voting and in which less than 50% of persons of voting age voted in the 1968 Presidential Election, any changes in voting laws or procedures (including reapportionment plans) enacted since November 1, 1968 may not take effect until they have been approved by either the Attorney General of the United States or by the District Court in the District of Columbia.

On March 27, 1971, the United States Bureau of the Census determined that the Counties of The Bronx, Kings and New York were subject to the above provisions of the Voting Rights Act since a literacy test was used in those counties prior to 1970 as a precondition to voting and since less than 50% of the persons of voting age residing in those counties voted in the Presidential Election of 1968.

The Voting Rights Act permits a state or county that has become subject to its provisions to be exempted from the filing requirements of the Act by obtaining a declaratory judgment in the District Court for the District of Columbia adjudging that neither the purpose or effect of any test employed as a precondition for voting in the affected area was to deny or abridge any citizen's right to vote on account of race or color. The State of New

York brought such an action on behalf of The Bronx, New York and Kings Counties in December, 1971. After a four-month investigation into election procedures in the three affected counties, the Justice Department consented to the entry of the declaratory judgment sought by the State of New York and the District Court on April 13, 1972 issued an order granting the State's motion for summary judgment exempting the three affected counties from the filing requirements of the Voting Rights Act. *New York State v. United States*, D.D.C. Civil Action No. 2419-71.

In October, 1973, the Justice Department moved to reopen the declaratory judgment granted to the three affected counties on the ground that a decision by District Judge Charles E. Stewart in the Southern District of New York in the case of *Torres v. Sachs*, 73 Civ. 3921, had held that the failure of the New York City Board of Elections to provide a Spanish translation of the ballot violated the rights of Spanish-speaking citizens living in New York City in contravention of the Federal Voting Rights Act of 1965, as amended. The Justice Department's motion to reopen was granted by the District Court which on January 10, 1974 entered an order rescinding the previous declaratory judgment that had been granted to the State of New York and directed the State, on behalf of the three affected counties to comply with the filing requirements of § 5 of the Voting Rights Act. An application for a stay of that order was denied by the District Court and by the Supreme Court of the United States. Subsequently, on April 30, 1974, the District Court denied the motion of the State for summary judgment and entered a judgment dismissing the action for declaratory judgment.

The effect of the above proceedings has been to require the submission by the State of all voting laws and procedures, including reapportionment plans, that have been

enacted since November 1, 1968, to the Department of Justice insofar as they involve the Counties of The Bronx, Kings, and New York. On April 1, 1974 the Department of Justice issued a determination in which they approved fifty-one statutes involving changes in voting procedures, but refused to approve changes in certain assembly and State senate district lines in Kings and New York Counties and congressional district lines in Kings County on the grounds that while the purpose of those district lines might not have been to discriminate, the district lines had a racially discriminatory effect.

The effect of the Justice Departments ruling of April 1, 1974 under the provisions of the Voting Rights Act is to prevent any election from taking place in Kings and New York Counties under the district lines that have not been approved by the Justice Department.

While the Joint Legislative Committee on Reapportionment does not subscribe to the ruling of the Justice Department as expressed in the April 1 letter of Assistant Attorney General J. Stanley Pottinger, the exigencies of time require that new legislation be enacted to satisfy immediately the objections of the Department of Justice and thereby permit an orderly primary and general election to take place in New York and Kings Counties in 1974. The necessary remedial legislation must be enacted in time to obtain Department of Justice approval prior to June 17 which is the first date at which designating petitions may be circulated for the 1974 primary elections.

The apportionment plan submitted was prepared to effect compliance with the United States Department of Justice determination of April 1, 1974. It is the opinion of this Committee that compliance with such determination must be achieved without violating the provisions of Article 3 of the New York State Constitution and Chapter 11 of the Laws of 1972 (insofar as such Law does not conflict with such April 1, 1974 determination). Also, the

Committee is of the opinion that to insure holding an orderly election it is appropriate to limit the confusion which generally results from the modification of legislative districts by minimizing both: (1) The number of legislative districts being altered and (2) The alteration within such districts. In so doing a minimal number of residents have been affected. The Committee was also concerned with the burden placed on the Boards of Election of Kings and New York Counties by effecting compliance with the Justice Department determination. Each of the boards necessarily must create, describe and map new election districts which have been altered by the proposed amendment. Once accomplished, new polling places must be secured, residents notified of changes in election districts, new registration lists prepared and various other procedures implemented as required by the election law. Most of these procedures must be completed prior to the first day for circulating designating petitions—June 17, 1974. The Committee is of the opinion that compliance with Federal and State standards has been achieved by the modification of only twenty-eight (28) districts, as follows:

TYPE	COUNTY	NUMBER OF DISTRICTS	NUMBER OF DISTRICTS MODIFIED
Congress	Kings	6 (5+1 partial)	4
Senate	Kings	10 (8+2 partial)	6
	New York	7 (4+3 partial)	2
Assembly	Kings	22 (21+1 partial)	12
	New York	13 (12+1 partial)	4
TOTAL			28

DISTRICTING

A—Kings County Congress. Apparently the Department of Justice has determined that the proportion of non-

white residents to white residents living within the Twelfth Congressional District resulted in a racially discriminatory effect, and it is therefore incumbent upon the Legislature to create more than one congressional district which would contain substantial majorities of non-white inhabitants. The population of the pre-existing Twelfth Congressional District was 89.9% non-white and 10.1% white. The adjacent Fourteenth Congressional District was 47% non-white and 53% white. By merging the geographical area of the Twelfth and Fourteenth Districts, and then dividing the merged area north to south (principally along Manhattan avenue, Leonard avenue, Lorimer street, Throop avenue, and Troy avenue) two districts were created, each having minority population in excess of 64%. Proposed District Twelve contains 46,726 persons of which 339,569 or 72.6% are non-white. Proposed District Fourteen contains 467,735 persons of which 302,157 or 64.6% are non-white. District Thirteen and Fifteen were nominally modified to reunite neighborhood communities which had been divided under a prior apportionment plan.

B—Kings County Senate. Under existing lines there is only one Senate district in Kings County which contains a substantial non-white majority (the Eighteenth). To overcome Justice Department objections, the Committee has attempted to create three senate districts which contain substantial non-white majorities. To do so the Committee:

(1) Joined the eastern portion of Senate District Eighteen, which is heavily non-white, with the moderately heavy non-white, northwest area of the Sixteenth Senate District and the heterogeneously populated southeastern portion of the Seventeenth Senate District. Proposed Senate District Seventeen contains over 234,985 non-white residents and the district is 77.1% non-white.

(2) Joined the western portion of Senate District Eighteen, which is heavily non-white, with the substantially non-white, northeastern portion of the Twenty-third Senate District, a major part of the Kings part of the Twenty-fifth Senate District, which is basically non-white and part of the Seventeenth Senate District. Proposed Senate District Twenty-three contains in excess of 216,147 non-white residents and the district is 71.1% non-white.

(3) Joined the remaining portion of the Eighteenth Senate District, which is heavily non-white, with substantially all of the remaining portion of the seventeenth Senate District which is primarily white. Proposed Senate District Eighteen contains over 219,186 non-white residents and the district is 72.1% non-white.

In order to devise the new non-white Seventeenth Senate District, the northwestern portion of the present Sixteenth Senate District was added to the Seventeenth Senate District. It was therefore necessary to add an equal number of persons from the present Nineteenth Senate District to the new Sixteenth Senate District to achieve a full population ratio. Similarly, the population removed from the present Nineteenth Senate District was restored to the new Nineteenth Senate District by adding thereto the remaining portion of the present Twenty-third Senate District (that part east and south of Prospect Park). The remaining unallocated, but contiguous area resulted in the new Kings County portion of the Twenty-fifth Senate District.

Senate Districts Twenty, Twenty-one, Twenty-two and Fifteen (Kings County portion) were not altered.

C—New York County Senate. The population of the Twenty-eighth Senate District is 57.6% non-white. The adjacent Twenty-ninth Senate District is 48.8% non-white. While the

the Twenty-eighth Senate District is presently represented by a non-white incumbent, the Justice Department is apparently of the opinion (contrary to their reasoning with respect to their determination concerning the Kings County Senate Districts) that the proportion of non-white to white residents residing within the present Twenty-eighth Senate District is inadequate, and thus effectively dilutes minority representation within New York County. While the Committee disagrees with this apparent reasoning, particularly in light of current election results and the increasing non-white population migrating into the present Twenty-ninth Senate District since 1970, it accedes, reluctantly, to the judgement of Mr. Pottinger. Thus, the Committee transferred that area of the present Twenty-eighth Senate District, bounded by West 112th street, Broadway, and West 131st street, to the proposed Twenty-ninth Senate District.

The area east of Seventh avenue, north of West 139th street and west of Lenox avenue, which is predominantly non-white, was then transferred from the Twenty-ninth Senate District to the Twenty-eight Senate District. This change results in the proposed Twenty-eighth Senate District having non-white population of 200,033 or 65.8%. However, the proposed Twenty-ninth Senate District's non-white population has been reduced to 45.9%.

It is the opinion of the Committee that not only are the present Senate lines in New York County fully in compliance with Federal Constitutional standards, but that any modification of existing lines would tend to effectively dilute minority opportunity for the remainder of the decennial period (1982) during which the present apportionment shall control.

D. Kings County Assembly. There are twenty-two assembly districts within Kings County. Of these the populations of 6 are over 60% and 1 district contains a population which is over 50% non-white. Five districts are represented in the legislature by non-whites.

Apparently the Justice Department has determined that the present apportionment within Kings County unnecessarily consolidates the non-white population into Black Assembly districts, and therefore results in a racially discriminatory effect. Therefore, to achieve compliance, it was necessary to transfer non-white populated areas from those "consolidated" non-white assembly districts into adjacent areas having less than a substantial majority of non-whites.

The Committee first determined which presently existing assembly districts already contained substantial, but less than sufficient majorities of non-white residents. Present Assembly Districts Fifty-seven and Fifty-nine contained 61% and 52% non-white populations respectively, and are adjacent to existing heavily populated minority districts, to wit: the Fifty-sixth and Fifty-fifth. Thus by transferring non-white areas from the present Fifty-sixth and Fifty-fifth Assembly Districts into the present Fifty-seventh and Fifty-ninth Assembly Districts, and thereafter transferring heavily white populated areas from the present Fifty-seventh and Fifty-ninth Assembly Districts, two additional non-white assembly districts are created. These exchanges have been accomplished without reducing the substantial non-white pluralities of the pre-existing minority assembly districts. The Committee therefore has been able to draw five assembly districts having a non-white population of over 75% and two additional assembly districts having a non-white population of over 65%.

To accomplish this the northeast triangle of the Fifty-seventh Assembly District, an area which does not contain heavy concentrations of minority residents, was transferred into the Fifty-sixth Assembly district and areas of the Fifty-sixth and Fifty-second Assembly Districts containing heavy concentrations of minority residents were transferred into new Assembly District Fifty-seven. Proposed Assembly District Fifty-seven contains over 78,499 non-white inhabitants and the district is 65.0% non-white.

Because of the above modifications, present Assembly District Fifty-two did not contain a full ratio of apportionment. This could be remedied in only two ways. A sufficiently populated area of the northern portion of the Fifty-first Assembly District or a comparably populated area of the northwest portion of the Forty-fourth Assembly District could be transferred to the Fifty-second Assembly District. The Committee chose to transference the northwest portion of the Forty-fourth Assembly District to the Fifty-second Assembly district for several reasons. The northern portion of the present Forty-fourth Assembly District was contiguous with its southern portion solely by reason of Prospect Park, a condition which elicited oral criticism from representatives of the Justice Department because of the heavily Black population residing north of Prospect park. In addition, the present Fifty-third Assembly District extended across both sides of Eastern parkway, a major Brooklyn highway and could be redesigned into a more compact shape by extending its western boundary to the eastern boundary of the proposed Fifty-second Assembly District and by moving the southern boundary northerly to Eastern parkway. The area transferred from the present Forty-fourth Assembly District replaced by that portion of the present Fifty-third Assembly District line south of Eastern parkway and west of New York avenue. Since the population within this part of the present Fifty-third Assembly District, the northern portion of the present Fifty-first Assembly District. The population disparity resulting from such transfer was corrected by transferring minor portions of the present Fifty-second Assembly District, (done in such manner as to effectively straighten the common boundary between the Fifty-first and Fifty-second Assembly Districts) together with seven blocks from the Fiftieth Assembly District.

In order to further overcome the objections raised with respect to the presently "elongated" Forty-fourth

Assembly District, the Committee transferred the southern portion of the Forty-fourth Assembly District, which lies principally south of Foster avenue into the proposed Forty-eighth Assembly District and the northeastern portion of the Forty-eighth Assembly District was moved into the proposed Forty-fourth Assembly District. The resulting Forty-fourth Assembly District is considerably more compact than as it previously existed. These transfers also effectively united homogeneously related areas of the present Fifty-third Assembly District and Forty-fourth Assembly District.

At this point the proposed Forty-eighth Assembly District did not contain sufficient population, and it was therefore necessary to transfer the northeast portion of the Forty-seventh Assembly District to the proposed Forty-eighth Assembly District. Since this transfer was necessary, it was decided appropriate to recreate the proposed Forty-seventh Assembly District in as compact a shape as possible. Therefore, shift of geographical areas between the Forty-seventh Assembly District and the Forty-eighth Assembly District were made.

The Forty-ninth Assembly District was modified to provide a sufficient population ratio for the proposed Fiftieth Assembly District (which necessarily lost a nominal seven block area to the proposed Fifty-first Assembly District in order to effect closure).

At this point, the Fifty-sixth, Fifty-third and Fifty-fifth Assembly Districts were still very heavy minority districts. In order to complete a population ratio, however, a small portion of the present Fifty-fifth Assembly District was added to the proposed Fifty-sixth Assembly District.

The proposed Fifty-ninth Assembly District was formed by adding the northern half of the present Fifty-fifth Assembly District to the northern half of the present Fifty-ninth Assembly District, and by adding a nominally heavy

minority portion of the present Fifty-sixth Assembly District. This resulted in the formation of a second new minority district.

The proposed Fifty-fifth Assembly District was formed by adding the southern portion of the present Fifty-fifth Assembly District to the southern portion of the present Fifty-ninth Assembly District.

Present Assembly Districts Thirty-eight, Thirty-nine, Forty, Forty-one, Forty-two, Forty-three, Forty-five, Forty-six, Forty-four and Fifty-eight have not been altered.

E. New York County Assembly. The Justice Department's adverse determination was principally based on the ethnic composition of the elongated Seventy-first Assembly District. Apparently it was the opinion of the Justice Department that the resulting Seventieth, Seventy-second, and Seventy-fourth Assembly Districts overly consolidated non-white communities, and therefore the 1971 apportionment plan had a racially discriminatory effect. It was immediately apparent to the Committee that compliance could be achieved with minimal alteration by merely consolidating the combined geographic area of the Seventieth, Seventy-first, Seventy-second and Seventy-fourth Assembly Districts and thereafter designing four assembly districts solely within that area. This of course resulted in leaving unaltered the nine remaining Assembly Districts within New York County. The Committee further concluded that in order to satisfy the objections of the Justice Department, it would be necessary to violate the long established traditional Assembly District patterns in northern Manhattan by creating Assembly Districts running from the Hudson River to the East or Harlem River. Therefore the proposed Seventy-fourth Assembly District is bounded on the north by the southern boundary of the present Seventy-third Assembly District. The southern boundary of the proposed Seventy-fourth is principally 146th street and 145th street. It con-

tains in excess of 84,000 non-white residents and is 69.3% non-white.

The Seventy-first Assembly District was formed conceptually in the same manner. Its southern boundary is principally 125th, 130th, 127th, 126th, and 132nd street and the district runs river to river. The proposed Seventy-first Assembly District contains approximately 110,000 non-white inhabitants and 89.5% non-white.

Due to the substantial Puerto Rican population residing along the East and Harlem River the Committee determined it appropriate to consolidate as much of the population of Puerto Rican extraction as possible. Therefore the Committee devised the Seventy-second Assembly District principally by drawing its western boundary along Fifth avenue. The proposed Seventy-second Assembly District contains a minority population in excess of 100,000 non-whites and it is 82.7% non-white. Specifically, the Black population within the proposed Seventy-second Assembly District is 49,903 or 40.8% and the Puerto Rican population is 49,291 or 40.3%.

The proposed Seventieth Assembly District is constituted by the remaining unallocated area. Its population is over 85,000 non-white and it is 72.2% non-white. The proposed districting results in the creation of four minority districts.

PARTICIPATION

Due to the extremely short period available to the Committee for completing its work and the countless hours required in effecting compliance with the New York State Constitutional block on the border rule, the Committee was unable to hold Public Hearings. However, participation by any legislator, individual, public or special interest group was most welcome. The Committee has received either directly or through the Attorney General's office numerous

suggested districting plans. While many of these were merely suggested responding specific Assembly, Senate or Congressional Districts, the Committee staff platted every suggestion received. This information was of substantial assistance to the Committee, particularly with respect to policy determinations.

For example, a Mr. Ron Alheim presented to the staff two suggested assembly districting plans for New York County. One plan altered each assembly district in New York County which is unnecessary, and therefore was rejected. The second plan was most helpful to the Committee. The principal differences between the second plan and that recommended by the Committee are:

- (1) It did not create districts of equal population.
- (2) It failed to comply with Constitutionally mandated block on the border requirements.

The NAACP transmitted its general suggestions by letter to the Attorney General. Neither specific descriptions or maps were received by the Committee. However, the general considerations contained in Mr. Schnapper's letter were seriously considered and to the extent possible were implemented conceptually into the proposed plan.

Councilman Samuel Wright forwarded specific descriptions of non-white Congressional, Senate and Assembly districts for Brooklyn. These descriptions were plotted on maps and population counts were taken. The population of the individual districts, once plotted, was inaccurate. The principle objection, however, was the failure by Mr. Wright to complete a districting plan for the entire county, which would require redrawing all of the districts within Kings County. This the Committee did not feel appropriate. Notwithstanding this, the Committee is of the opinion that the policies and concepts set forth in the plan presented by Mr. Wright have been carried forward into the recommended redistricting.

Numerous other suggestions were received by the Committee and in like matter each was seriously considered.

It is the opinion of the Committee that the proposed amendment constitutes a fair and reasonable Congressional, Senate and Assembly districting which is in concert philosophically and conceptually with substantially all of the suggestions forwarded to the Committee.

CONCLUSION

While in disagreement with its determination, the Committee wishes to express its gratitude to the Department of Justice and the members of its staff who have conscientiously cooperated fully with the staff of the Joint Committee on Reapportionment. Each staff has been in relatively constant communication by conference, mail or telephone. It is important to state however, that the principal purpose of such communication was to more clearly define and establish the guidelines which necessarily had to be followed in order to effect compliance. The Department of Justice has not finally reviewed the proposals of the Committee in accordance with their established procedures and will not do so until such time as a proposed amendment is enacted into law. Due to such continued communication and the data already furnished to the Justice Department a final determination can be made sufficiently in time to meet the June 17, 1974 date for commencing the circulation of designating petitions.

Chapter 11 of the Laws of 1972 was previously the subject of extensive litigation in the State Courts. The districting plans set forth in such Law (and currently in effect) was found to be in compliance with the United States and State Constitution (*Schneider v. Rockefeller* 31 N.Y. 2d 420 [1972]).

The statutory authority granted to the Justice Department, exercised at a time immediately prior to the general

election, effectively made it impossible for the State of York to seek judicial review. In this instance, the State, while being afforded a right to judicial review is unable to secure a remedy due to the immediacy of the election. It is the opinion of the Committee that if judicial review was available within the time permitted, the existing apportionment would be held valid. It is further the opinion of the Committee that the proposed apportionment plans as set forth in uni-bills S1;A1 and S2;A2 are fully in compliance with the United States Constitution, the New York Constitution and the April 1, determination of the United States Department of Justice.

Respectfully submitted,

Hyman M. Miller, Chairman Fred Droms, Jr.

Jay P. Rolison, Jr. James L. Emery
Vice-Chairman

Thomas R. Fortune, Secretary Leonard Silverman

John D. Caemmerer Ronald B. Stafford

John D. Calandra Chester J. Straub

APPENDIX A—ASSEMBLY DISTRICT FORMATION.

ASSEMBLY DISTRICT	DISTRICT POPULATION	DEVIATION FROM STATE MEAN 121,608	DISTRICT FORMATION
44	120,768	— .006907	Wholly within the county of Kings.
47	120,768	— .006907	Wholly within the county of Kings.
48	120,768	— .006907	Wholly within the county of Kings.
49	120,768	— .006907	Wholly within the county of Kings.
50	120,768	— .006907	Wholly within the county of Kings.
51	120,768	— .006907	Wholly within the county of Kings.
52	120,907	— .006907	Wholly within the county of Kings.
53	120,768	— .006907	Wholly within the county of Kings.
55	120,768	— .006907	Wholly within the county of Kings.
56	120,768	— .006907	Wholly within the county of Kings.
57	120,678	— .006907	Wholly within the county of Kings.
59	120,768	— .006907	Wholly within the county of Kings.
70	122,312	+ .005789	Wholly within the county of New York.
71	122,312	+ .005789	Wholly within the county of New York.
72	122,312	+ .005789	Wholly within the county of New York.
74	122,312	+ .005789	Wholly within the county of New York.

APPENDIX B.—ASSEMBLY DISTRICT EVALUATION.

Assembly	
State Mean (Apportionment Ratio)	121,608
Largest District	123,814
Smallest District	119,691
Population Variance Between Largest and Smallest District	1.034 to 1
Maximum Deviation From State Mean	+ .018140
Minimum Percent of Population Required to Elect a Majority of Assembly Representatives (Based on 76 vote majority)	50.3%

Note to Appendix B: The above statistics have not been affected by the modifications of the districts presented in this report. These statistics are identical to those presented in the Interim Report dated December 14, 1971.

APPENDIX C—SENATE DISTRICT FORMATION.

SENATE DISTRICT	DISTRICT POPULATION	DEVIATION FROM STATE MEAN 304,021	DISTRICT FORMATION
16	304,003	— .000059	Wholly within the county of Kings.
17	304,002	— .000062	Wholly within the county of Kings.
18	304,003	— .000059	Wholly within the county of Kings.
19	304,003	— .000059	Wholly within the county of Kings.
23	304,003	— .000059	Wholly within the county of Kings.
25	304,002	— .000062	Part of the county of Kings (152,472) and part of the county of New York (151,530).
28	304,001	— .000066	Wholly within the county of Kings.
29	304,001	— .000066	Wholly within the county of Kings.

APPENDIX D—SENATE DISTRICT EVALUATION.

SENATE	
State Mean (Apportionment Ratio)	304,021
Largest District	306,798
Smallest District	301,225
Population Variance Between Largest and Smallest District	1.018 to 1
Maximum Deviation From State Mean	— .009196
Minimum Percent of Population Required to Elect a Majority of Senate Representatives (Based on 31 vote majority)	51.6%

Note to Appendix D: The above statistics have not been affected by the modifications of the districts presented in this report. These statistics are identical to those presented in the Interim Report dated December 14, 1971.

APPENDIX E—CONGRESSIONAL DISTRICT FORMATION.

CONGRESSIONAL DISTRICT	DISTRICT POPULATION	DEVIATION FROM STATE MEAN 467,725	DISTRICT FORMATION
12	467,726	+ .000002	Wholly within the county of Kings.
13	467,726	+ .000002	Wholly within the county of Kings.
14	467,735	+ .000021	Wholly within the county of Kings.
15	467,741	+ .000034	Wholly within the county of Kings.

APPENDIX F—CONGRESSIONAL DISTRICT EVALUATION.

CONGRESSIONAL

State Mean (Apportionment Ratio)	467,725
Largest District	467,984
Smallest District	467,219
Population Variance Between Largest and Smallest District	1.0016 to 1
Maximum Deviation From State Mean	-.001081
Minimum Percent of Population Required to Elect a Majority of Congressional Representatives (Based on 20 vote majority)	51.2724%

Note to Appendix F: The above statistics have not been affected by the modifications of the districts presented in this report. These statistics are identical to those presented in the Interim Report dated March 5, 1972.

APPENDIX K—CRITERIA FOR ESTABLISHING ETHNIC COMPOSITION, KINGS ASSEMBLY.

	White	Black	Puerto Rican	Other
<i>A.D. 40</i> (76.1% non-white) 120,768	23.9%	55.8%	19.9%	.4%
<i>A.D. 53</i> (85.5% non-white) 120,768	14.5%	78.5%	5.6%	1.3%
<i>A.D. 54</i> (86.2% non-white) 120,768	13.8%	67.6%	18.3%	.2%
<i>A.D. 55</i> (81.4% non-white) 120,768	18.6%	64.4%	16.5%	.5%
<i>A.D. 56</i> (88.1% non-white) 120,768	11.9%	74.6%	13.1%	.4%
<i>A.D. 57</i> (65.0% non-white) 120,768	35.0%	41.1%	22.1%	1.7%
<i>A.D. 59</i> (67.5% non-white) 120,768	32.5%	36.1%	31.2%	.3%

APPENDIX L—CRITERIA FOR ESTABLISHING
ETHNIC COMPOSITION, NEW YORK ASSEMBLY.

	White	Black	Puerto Rican	Other
<i>A.D. 70</i> (72.2%)	27.8%	61.5%	8.6%	2.1%
non-white) 122,312	34,003	75,222	10,519	2,569
<i>A.D. 71</i> (89.5%)	10.5%	80.5%	7.8%	1.2%
non-white) 122,312	12,843	98,461	9,540	1,468
<i>A.D. 72</i> (82.7%)	17.3%	40.8%	40.3%	1.7%
non-white) 122,312	21,160	49,903	49,291	2,079
<i>A.D. 74</i> (69.3%)	30.7%	59.0%	8.9%	1.3%
non-white) 122,312	37,550	72,164	10,886	1,590

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74 C 877

[Caption omitted]

Notice of Motion

Sirs:

PLEASE TAKE NOTICE that, on the complaint and previous proceedings herein, the undersigned will move this court on June 1974, at , or as soon thereafter as counsel can be heard for an Order pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure dismissing the Complaint for failure to state a claim upon which relief can be granted.

Dated: New York, New York
June 19, 1974

Yours, etc.,

/s/ [Illegible]

JACK GREENBERG

ERIC SCHNAPPER

Suite 2030

10 Columbus Circle

New York, New York 10019

Counsel for N.A.A.C.P., etc., et al.

**Memorandum in Opposition to Approval of
Chapters 11, 76, 77 and 78
New York Laws of 1972**

Introduction

Section 5 of the Voting Rights Act requires that the Attorney General interpose an objection to Chapters 11, 76, 77 and 78 unless he determines that those provisions do not have the purpose and will not have the effect of discriminating on the basis of race. 42 U.S.C. § 1973c. The burden of proof is on the submitting authority to establish that the new statutes lack a discriminatory purpose of effect. 28 C.F.R. § 51.19.

The standard of proof in these proceedings is different than it would be in a constitutional challenge to Chapters 1, 76, 77 and 78; the submitting authority is required to prove more than that those provisions do not violate the Fourteenth and Fifteenth Amendments. As the Supreme Court has repeatedly recognized, the Voting Rights Act was enacted with the express purpose of raising the standard which must be met by election laws, because Congress had concluded, after extensive inquiry, that suits under the Fourteenth and Fifteenth Amendments had proved inadequate, *South Carolina v. Katzenbach*, 383 U.S. 301, 309-315 (1966); *Allen v. Board of Elections*, 393 U.S. 544, 556 n. 21 (1969). In its letter of February 22, 1974, to Mr. Pottinger, New York referred to a series of cases enunciating the standard for determining whether a statute violates the Fourteenth and Fifteenth Amendments; the standard announced in those decisions is not merely inapplicable here, it is the very standard which Congress rejected in enacting the Voting Rights Act.

The Voting Rights Act requires, inter alia, that the submitting authority establish that a redistricting plan does not have the purpose of discriminating on the basis of race.

constitutional standard, the standard *rejected* by Congress, would be met in most instances merely by showing an absence of racial remarks during the legislative debates, no matter how peculiar their resulting lines. See *Wright v. Rockefeller*, 376 U.S. 52 (1964). Manifestly the Attorney General must require a greater showing than that in a section 5 proceeding, or the "purpose" clause of the Voting Rights Act would be a dead letter. We would urge that, in the case of a redistricting plan the submitting authority to establish non-discrimination in purpose must show (a) that the method by which the lines were drawn was well designed to assure the absence of any discriminatory purpose, and (b) that under the resulting lines the proportion of non-white votes diluted by being placed in majority white districts was no greater than the proportion of white votes diluted by being placed in majority non-white districts, and (c) to the extent that the submitted district lines carry forward features of earlier districting plans, that those earlier plans did not have a discriminatory purpose. In the instant case none of these standards have or can be met.

Section 5 review is triggered by the enactment or adoption of a new election law or procedure. In determining whether that law or procedure has a discriminatory effect, it is the usual practice to first compare the effect of the law or practice with the law or practice which it replaces, since the old law or practice could and would continue in effect if the new law or practice were disapproved. The situation is different when redistricting is involved, for shifts in population have rendered the pre 1972 district lines invalid, and there is no "old" law to which to revert if the new law is disapproved. When time and changes in population have invalidated an old districting plan, the legislature which prepares a new plan writes on a *tabula rasa*, and the effect of the new plan must be assessed in terms of all possible alternatives. Where, as here, the old

district lines were themselves discriminatory, the Voting Rights Act requires, not merely that the 1972 lines be no more discriminatory than the 1968 lines, but that the 1972 lines not be discriminatory at all.

Authority To Make Submissions

When a county rather than entire state is covered by the Voting Rights Act, submission under Section 5 must be made by the county rather than by the state. The distinction is of importance because the submitting authority must represent that the changes submitted do not have a discriminatory purpose or effect. When the officials authorized to submit a law conclude that that law is discriminatory, the officials have an obligation to refuse to submit the law since they cannot in good faith make the required representations. Such a refusal would preclude federal approval of those alterations in election laws or procedures.

In the instant case the chief elected officials in the counties involved are the Borough Presidents. Chapters 11, 76, 77 and 78 have been submitted, not by the Borough Presidents, but by the State Attorney General. In two of the counties, New York and Bronx, the Borough Presidents have expressly denied to the Attorney General any authority to make submissions on their behalf; the position of the third Borough President is not known. We believe that, in view of these considerations, Chapters 11, 76, 77 and 78 have not been validly submitted in accordance with the Voting Rights Act and the regulations thereunder. The Attorney General need not resolve this question, however, since these Chapters must in any event be disapproved on their merits.

Historical Background

The key obstacle to Black and Puerto Rican participation in the political process in New York, Bronx, and Kings

Counties has for several decades been the efforts of white officeholders despite the constantly growing non-white population. Between 1960 and 1970 alone, the non-white population rose from 25.1% to 34.8% of New York County, from 14.5% to 36.6% in Kings County, and from 11.8% to 31.9% in Bronx County.

The Black and Puerto Rican population in the three counties has been largely confined to ghettos in each of the counties: Harlem and the Lower East Side in New York County, the South Bronx in Bronx County, and Bedford Stuyvesant and certain contiguous areas in Kings County. This confinement is largely the result of housing discrimination and of the unusually high incidence of poverty among Blacks and Puerto Ricans.

At the time when the non-white population began its rapid growth, as now, most parts of the three counties were so overwhelmingly Democratic that Republicans could not be elected to local office. Accordingly the politics which mattered to Blacks and Puerto Ricans was and is Democratic Party politics. Throughout this period of growth the white political leadership in the Democratic Party has been divided into two loose factions, known locally as the "regulars" or the "organization," and the "reformers." The Democratic County Chairmen in all three counties are still regulars but reform candidates have succeeded within the last decade in capturing most of the public offices in New York County, and making significant inroads in Kings and Bronx Counties.

It became apparent at an early date that, if non-whites became a majority or any district, they would unseat the white incumbent and elect a Black or Puerto Rican. Conversely, a minority candidate could not, as a general rule, be elected in a district with a white majority. As the Black and Puerto Rican population grew in the 1950's and 1960's, it began to imperil the districts of incumbent white

legislators in the ghetto areas, virtually all of whom, at the time, were regulars.

Far more was and is at stake than the Senators, Assemblymen and Congressmen obviously affected. The whole elaborate apparatus of patronage and gratuities in New York City is structured around the Assembly, Senate and Congressional Districts. The key figure in each neighborhood varies. Most often it is the elected party Assembly District Leader, chosen during primaries every two years, whereas Congressmen are less often involved. Election to any local party or public office carries with it the ability, in varying degrees, to participate in the following activities (1) Distribution of patronage jobs. Every year a substantial number of city and state jobs are awarded through the party infrastructures. Because of the cordial relations between the two major parties, a certain number of such jobs are given by the Mayor and Governor to members of the opposing party. Patronage jobs within the city have traditionally been particularly common in the Board of Elections and in the Departments of Purchase and Sanitation; the state hands out several million dollars a year to part time employees in "no-show" jobs. (2) Distribution of Surrogate Court work.

It became apparent at an early date that, if non-white became a majority or any district, they would unseat the white incumbent and elect a Black or Puerto Rican. Conversely, a minority candidate could not, as a general rule, be elected in a district with a white majority. As the Black and Puerto Rican population grew in the 1950's and 1960's, it began to imperil the districts or incumbent white legislators in the ghetto areas, virtually all of whom at the time, were regulars.

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the individual involved. Firms and individuals doing business with the City commonly give some business—in the form of retainers, insurance purchases etc.—to political leaders and public officials in the hope of favorable treatment. At times those expectations are well founded. Similarly, such officials and leaders can expect an edge in doing business with the city and state; millions of dollars of public funds are deposited each year, for example, in interest free accounts in banks in which political leaders are involved. Also, through the practice may have declined in recent years, individuals who obtain, or seek to obtain, jobs through political leaders and public officials occasionally make personal or political contributions in return for, or expectation of, that employment.

All these activities are of particular importance to the Democratic and Republic Party County Chairmen in New York City. These Chairmen are in a position to exercise the greatest amount of influence over patronage, Surrogate Court work, judgeships, and gratuities. For a county chairman inclined to do so, his position can be financially rewarding. Since the County Chairmen are elected by the Assembly District Leaders, they are vitally interested in the way that Assembly District lines are drawn.

Rather than accept the election of Blacks and Puerto Ricans and the defeat of their own candidates, White officials in the last several decades resorted to a variety of strategies. Black and Puerto Rican candidates and insurgent organizations were dissuaded from opposing white incumbents by offers of patronage or future support. When a non-white candidate did run against a white incumbent, the incumbent or his supporters frequently persuaded another non-white candidate to run and split the Black and Puerto Rican vote. And, where feasible, district lines were gerrymandered to prevent the defeat of white candidates.

This strategy generally succeeded in minimizing the political influence of non-white voters. The first non-white

State Senator was not elected in Kings County, for example, until 1964. Prior to 1968 there still was not a majority non-white Congressional District in Kings County, the large Bedford-Stuyvesant ghetto being divided among five majority white districts. As a result of federal litigation the Congressional Districts in Kings County were redrawn in 1968, and a majority non-white district was created. That district, the 12th, has been represented since its creation by Congresswoman Shirley Chisholm. In New York and Kings County racial gerrymandering has, for geographical reasons, been far more difficult to accomplish. Once a non-white majority becomes established in a district in any county, the white factions of the Democratic Party endorse and support non-white candidates, and abandon any effort to elect whites.

Legislative History

The materials which you have received from New York suggest that the submitted lines were drawn by the Joint Legislative Committee on Reapportionment. That is not the case.

The district lines at issue were drawn by the Republican and Democratic chairmen of the three counties involved. First, the Republican chairman in each county was allowed to draw whatever lines he wanted to further the prospects of Republicans. The Republican chairmen are Joseph Caltandra in Bronx County, Vincent Albano in New York County, and George Clark in Kings County. In general the Republican chairmen were interested in very few of the lines, since all three counties are so heavily Democratic that Republicans cannot win no matter how the districts are shaped. Second, the remaining lines in each county were drawn by the Democratic county chairmen. The Democratic chairmen are Patrick Cunningham in Bronx County, Frank Rossetti in New York County, and Meade Esposito in Kings County. It is our understanding that the map drawing was

done either in the private offices of the county chairmen or the party county headquarters. In the past private hotel rooms have been used. The role of the staff of the Joint Committee was limited largely to making technical adjustments to assure districts of comparable size.

We were not of course privy to the political discussions and deals in which these political chairmen were involved. A number of incidents have come to light which indicate the general tenor of the considerations involved. (1) In the plans initially drafted, it was contemplated that the Hassidic Jewish community in Crown Heights, which is surrounded by Blacks and Puerto Ricans, would have to be in a majority non-white Assembly district. When word of this reached that white community, it produced a storm of protest at the possibility of being represented by a Black Assemblyman. Accordingly, a corridor was created through the minority areas to include Crown Heights in 41st Assembly District which, not coincidentally, is represented by the Democratic leader of the State Assembly. (2) In the plans initially drafted, it was contemplated that, because of the increase in Black and Puerto Rican population, an additional majority non-white Assembly District would have to be created. It was contemplated that this be done by redrawing the districts so that the 44th Assembly District would have a non-white majority, a decision reflecting the relative power of the various Assemblymen. This decision, however, was also overturned by pressure from the white community which would have been in the new district. (3) White incumbents whose districts had a growing Black and Puerto Rican population requested adjustments to prevent the growth from yielding a majority non-white district. The extent to which such relief was afforded reflected, *inter alia*, the political influence of the incumbent.

As this situation developed, a substantial effort was made by Black and Puerto Rican legislators to thwart the impending gerrymandering. In December of 1971 those legis-

lators refused to vote for Governor Rockefeller's tax package unless they were guaranteed that redistricting would assure, at the very least, that there was an additional majority non-white congressional district in Brooklyn. This refusal was sufficient, under the then existing circumstances, to prevent passage of the tax measures. The Black and Puerto Rican legislators met with the Governor to seek his help, help which would have been critical since there was a Republican majority in both houses of the legislature. The Governor explained he would not help since he owed several favors to the Kings County Democratic chairman, Meade Esposito, in return for key legislative support Esposito had provided in earlier matters. Several legislators then met with Esposito, who gave them certain vague assurances, and in return the tax package was enacted. Subsequently, however, the redistricting was enacted in the form which the minority legislators had opposed.

We maintain that this legislative process was so fraught with potential for abuse as to require the Attorney General to object to the submitted lines. The critical decision whether to permit the creation of majority non-white districts, districts which would have assured the defeat of white incumbents, was in the hands of the white county chairman chosen by and accountable to those very incumbents. One cannot readily conceive of a system more likely to assure that as many Blacks and Puerto Ricans as possible would be placed in majority white districts so as to protect the interests of white incumbents. Nor can one identify individuals with a greater personal, financial and political interest in such discrimination than the county chairman who drew the instant lines. The method by which these lines were prepared was so tainted with potential for prejudice as to preclude the Attorney General from concluding that they did not have the purpose of discriminating on the basis of race. Compare *Tumey v. Ohio*, 273 U.S. 510 (1927).

Racially Polarized Voting

Racially polarized voting, the overwhelming tendency of white voters to vote against Black or Puerto Rican candidates, is a well established fact of political life in New York. Black and Puerto Rican candidates rarely if ever run in districts with solid white majorities. White candidates rarely if ever run in districts with solid Black and Puerto Rican majorities. No Puerto Rican or Black has ever been elected to statewide office. No Puerto Rican or Black has ever been elected to a city-wide office in New York City. With the exception of the Borough President of Manhattan, who ran unopposed, not a single majority white district in New York City is currently represented by a Black or Puerto Rican office holder.

Races between white and non-white candidates are largely limited to formerly safe majority white districts in which the Black and Puerto Rican population has risen to or is approaching a majority. In such areas a serious challenge to the white incumbent is usually made by a Black or Puerto Rican candidate. A recent such example was the 1972 Democratic primary for Assembly in the 57th District in Brooklyn. This district was 50.1% non-white in 1970, with a somewhat smaller but rising voting age proportion. In 1972 the white incumbent, Harvey Strelzin was challenged by a Black candidate, (Name not clear). The north east portion of the district, in election districts 1-13, is overwhelmingly white. The rest of the district, encompassing the Fort Greene area, is predominantly Black and Puerto Rican, though more integrated than the white areas. The Black challenger won 27 of the 43 election districts, but lost the election because he was beaten by a margin of almost 10 to 1 in the white community.

Table A

1972 Democratic Primary: 57th Assembly District

ED	Strelzin (white)	Greenidge (black)	Strelzin per cent
1	89	24	77.8%
2	94	45	67.6%
3	275	21	93.2%
4	138	55	71.6%
5	196	7	96.5%
6	196	76	71.6%
7	157	19	89.3%
8	158	26	86.0%
9	265	13	95.2%
10	178	49	78.5%
11	20	4	83.5%
12	121	45	73.0%
13	73	8	90.2%
14	48	148	24.4%
15	74	95	43.7%
16	90	91	50.3%
17	76	63	31.6%
18	0	1	0%
19	66	74	97.0%
20	14	44	24.2%
21	79	161	32.9%
22	29	106	20.4%

ED	Strelzin (white)	Greenidge (black)	Strelzin per cent
23	63	76	45.3%
24	13	89	12.7%
25	47	73	39.1%
26	64	214	23.0%
27	68	89	42.6%
28	34	166	17.0%
29	71	100	41.5%
30	20	71	22.0%
31	76	86	45.8%
32	73	88	45.3%
33	67	87	42.5%
34	37	173	17.6%
35	21	33	38.9%
36	21	71	22.8%
37	60	90	50.0%
38	43	36	54.4%
39	88	115	92.3%
40	30	33	47.6%
41	16	17	48.5%
42	2	2	50.0%
43	5	5	50.0%
Total	3352	2889	53.8%

A similar pattern is revealed by the primary run-off for Mayor held in June 1973 between Abraham Beame, a white candidate from Brooklyn, and Herman Badillo, a Puerto

Rican candidate from the Bronx. The racial voting patterns were complicated by ideological and age differences between the candidates; Beame, in his sixties, was generally regarded as conservative, whereas Badillo, in his forties, was regarded as liberal. Notwithstanding these differences, and variations in white and non-white turnout, the pattern of racial voting was unmistakable.

Table B
Mayoral Primary Runoff: 1973

Assembly District	Badillo Vote	Rank by Badillo Vote	Non-white Population	Rank By non-white Population
77	91.7%	1	59.1%	11
79	88.2%	2	60.4%	10
55	80.7%	3	79.3%	4
70	80.5%	4	75.0%	5
78	79.8%	5	70.6%	8
75	76.5%	6	54.0%	12
54	73.5%	7	73.9%	6
53	71.9%	8	84.2%	2
56	70.2%	9	86.0%	1
72	69.4%	10	71.4%	7
59	68.9%	11	41.9%	17
69	67.9%	12	27.5%	23
71	67.8%	13	44.0%	16
40	65.5%	14	64.8%	9
64	63.4%	15	12.4%	36

Assembly District	Badillo Vote	Rank by Badillo Vote	Non-white Population	Rank By non-white Population
74	63.3%	16	84.2%	2
57	59.8%	17	50.1%	13
68	59.5%	18	17.6%	31
67	57.7%	19	16.7%	32
76	57.6%	20	45.4%	15
63	57.5%	21	39.4%	18
66	55.4%	22	2.4%	43
52	52.5%	23	27.1%	24
85	49.0%	24	31.3%	20
65	48.3%	25	6.1%	40
62	46.2%	26	47.9%	14
58	44.8%	27	27.1%	24
84	39.8%	28	22.4%	29
38pt	38.4%	29	32.8%	19
86	37.5%	30	23.2%	28
82	37.1%	31	29.2%	22
50	33.3%	32	12.1%	37
43	33.1%	33	30.5%	21
73	31.1%	34	14.0%	34
51	30.2%	35	12.6%	35
81	26.2%	36	23.7%	27
44	25.4%	37	25.1%	26
83	21.0%	38	8.8%	39

Assembly District	Badillo Vote	Rank by Badillo Vote	Non-white Population	Rank By non-white Population
80	20.6%	39	5.4%	41
49	17.8%	40	1.4%	45
39	17.6%	41	15.7%	33
41	17.3%	42	21.6%	30
46	16.0%	43	9.7%	38
45	15.2%	44	1.4%	45
47	14.8%	45	0.8%	47
42	13.6%	46	1.5%	44
48	12.3%	47	3.1%	42

Most deviations can readily be explained in racial or ideological terms. The 77th, 79th and 75th districts are heavily Puerto Rican and it was to be expected that a Puerto Rican candidate would do especially well there. The 53rd and 56th districts, with a Black rather than Puerto Rican population, are located in Brooklyn, the home Borough of the white candidate.

Given this pattern of racial voting, especially in local elections such as the Strelzin-Greenidge election, placing non-white in majority white districts dilutes the effectiveness of their votes and prevents those non-white voters from electing the candidates of their choice.

Blacks and Puerto Ricans in Majority White Districts

In an area such as New York where voting is heavily on racial lines, the franchise is worth relatively little to Blacks and Puerto Ricans in majority white districts. Since non-whites are highly concentrated in ghettos in each of the three counties, one would expect racially fair lines to place

most Blacks and Puerto Ricans in majority non-white districts. Certainly lines drawn in a color blind manner across the boundaries of the non-white ghettos would place a proportion of whites in majority non-white districts comparable to the proportion of non-whites in majority-white districts.

In fact, however, the districts were created to maximize the number of non-white votes dissipated harmlessly in majority white districts, while minimizing the number of white votes wasted in majority non-white districts.

Table C

County District	Non-whites in Majority White Districts	Whites in Majority Non-white Districts
<i>Kings</i>		
Congressional	54.9%	5.28%
Senate	55.97%	5.05%
Assembly	36.29%	11.04%
<i>New York</i>		
Congressional	43.58%	16.46%
Senate	50.54%	21.38%
Assembly	47.44%	8.47%
<i>Bronx</i>		
Congressional	47.53%	19.71%
Senate	50.19%	19.29%
Assembly	43.69%	20.34%

Several things about this table are particularly noteworthy. First, the disproportion in the degree to which white and non-white votes are diluted is greatest in Brooklyn, where we maintain racial gerrymandering is easiest and worst. Second, there is less dilution in Assembly Districts since they are smaller than Senate and Congressional Districts and thus less efficient for pairing Black and Puerto Rican neighborhoods with distant white areas. Third, the proportion of white voters in majority non-white districts in New York County Assembly Districts is less than half the proportion in any other districts in New York or Bronx Counties. Fourth, the apparently lower proportion of non-whites in majority white Assembly Districts in Kings County is the result of the 57th Assembly District, where the total population is 50.1% non-white. The proportion of the white population that is of voting age, however, is substantially higher than that of non-white population, so that in a district of equal white and non-white population, the voting population is about 55% white. See *Statistical Abstract of the United States*, 1968, p. 26. If the 57th Assembly District were treated as a majority white district, the proportion of non-whites in majority white assembly districts in Kings County would be 43.5% rather than 36.29%.

These differences are further reflected in the total number of non-whites in majority white districts, and the total number of whites in majority non-white districts. Treating districts less than 51% non-white as majority white, for the reasons stated above, the results are as follows.

Table C-1

County District	Non-whites in Majority White Districts	Whites in Majority Non-white Districts
<i>Kings</i>		
Congressional	455,862	93,547
Senate	574,811	44,081
Assembly	361,707	135,260
<i>New York</i>		
Congressional	233,227	165,082
Senate	268,436	213,980
Assembly	254,078	84,884
<i>Bronx</i>		
Congressional	256,367	183,869
Senate	264,589	182,223
Assembly	232,266	191,201

The number of non-whites in majority white districts exceeds the number of whites in majority non-white districts by between 3 and 5 to 1 in all districts in Kings County and in the Assembly Districts in New York County. The ratio is less than 1.5 to 1 in all the other districts.

The disproportionate number of non-whites in majority white districts is the result of racial gerrymandering. It has, and is intended to have, a discriminatory effect, particularly to preserve in office white incumbent legislators despite a rapidly growing non-white population. The gerrymandering is accomplished by pairing a smaller non-white community with a larger white community, yielding a safe

white district in which thousands of non-white votes have been safely dissipated.

The gerrymandering is worst in Kings County, where gerrymandering is easiest for geographical reasons. The non-white community in Kings County is largely concentrated in a single ghetto, which includes Bedford Stuyvesant in central Brooklyn, East New York to the east, Bushwick to the north, and Fort Greene to the West. The gerrymandering of the Congressional, Senate and Assembly Districts is accomplished in the same way. A single overwhelmingly non-white district (the 12th Congressional and 18th Senate), or in the case of the smaller Assembly Districts 5 districts (the 40th, 53rd, 54th, 55th and 56th), are placed in the center of the ghetto. Most of these districts are over 80% non-white. The non-white communities remaining further from the center of ghetto are then paired with larger white communities outside the ghetto. The non-white community of Bushwick is in the majority white 59th Assembly District (58.1% white), the majority white 17th Senate District (62.8% white), and the majority white 14th Congressional District (60.8% white). The non-white community of Fort Greene is in the majority white 57th Assembly District (55% white voting age population), the majority white 14th Congressional District and the 25th Senate District (about 45% of the voting age population is Black and Puerto Rican). The southern portion of Bedford-Stuyvesant is divided among three majority white Assembly Districts, the 44th (74.9% white), the 43rd (69.5% white) and the 41st (78.4% white, two majority white Senate Districts, the 23rd (66.2% white) and the 19th (81.3% white) and two majority white Congressional Districts, the 15th (86.0% white) and the 16th (75.2% white). The non-white communities of East New York and Brownsville are divided between a majority non-white Assembly District (the 40th, 35.2% white) and a majority white Assembly District (the 38th, 67.2% white in Brooklyn), but are en-

tirely within a majority white Senate District (the 16th, 52.9% white) and a majority white Congressional District (the 11th, 73.5% white.)

There are 245,940 Blacks and Puerto Ricans in the 6 majority white Assembly Districts which siphon off non-whites votes from the Bedford-Stuyvesant ghetto; the average Assembly District in New York has a population of 120,767. There are 523,216 Blacks and Puerto Ricans in the 5 majority white Senate Districts which siphon off non-white votes from the Bedford-Stuyvesant ghetto; the average Senate District in New York has a population of 304,000. There are 434,616 Blacks and Puerto Ricans in the 4 majority white Congressional Districts which siphon off non-white votes from the Bedford-Stuyvesant ghetto; the average Congressional District in New York has a population of 467,600. Not a single white community of any size is located in a majority non-white district in Kings County.

The racial gerrymandering in the other counties is severely limited by geography; the Black and Puerto Rican ghetto is concentrated at the northern end of an island in New York County, and at the southern end of a peninsula in Bronx County. In both counties a substantial discriminatory purpose and effect have been achieved by the Assembly District lines. In New York County substantial numbers of minority voters are included in the majority white 68th district (82.4% white) which siphons off 21,527 non-whites from the western portion of Harlem and the 71st District, which siphons off 53,818 non-whites, mostly Puerto Rican, from East Harlem. The non-whites siphoned off into these two districts would, if combined, constitute a majority of any single district. The non-white population in the Lower East Side ghetto in Manhattan is divided between two majority white Assembly Districts, the 62nd with 34,244 non-whites and 63rd with 48,191 non-whites. If the non-white population of these districts were combined in a single Assembly District, they would constitute a majority white

Assembly Districts reach into the South Bronx ghetto to pair off non-white communities with larger white areas. There are 38,387 non-whites in the 85th Assembly District (68.7% white), 27,473 in the 84th Assembly District (77.6% white), and 55,677 in the 76th Assembly District (54.6% white). The 84th district is most obviously gerrymandered, consisting of a predominantly non-white southern portion and a predominantly white northern portion, joined by an unpopulated mile long corridor known as the Major Deegan Expressway. The 123,537 non-whites siphoned off by these three Assembly Districts in Bronx County exceed in size the average Assembly District in New York.

Compactness

One ready index of the extent to which districts have been gerrymandered is their compactness. In the instant case we maintain that, to the extent possible, Black and Puerto Rican votes were diluted by placing one or more minority districts in the middle of the ghetto, and pairing the surrounding parts of the ghetto with larger white areas. If true this would generally be reflected by comparatively compact districts in the midst of the ghetto, and non-compact majority white districts including parts of the ghetto.

The compactness of a district can be computed in numerical terms by dividing the circumference squared by the area. This figure will be a constant for the same shape district, thus cancelling out any differences due to population density. The compactness ratio of any circle, for example, is 4π ; any square is 16, and any 30-60-90 degree triangle is 24.

The clearest story of gerrymandering is told by the compactness ratios of the Congressional districts in Brooklyn.

Table D

Compactness Ratios—Brooklyn Congressional Districts

District No.	Majority Race	Ratio
12	Non-white	38.8
13	White	63.7
14	White	78.6
15	White	48.6
16	White	77.8

These ratios reflect the compactness of the 12th Congressional district in the heart of Bedford Stuyvesant, and the elongated majority white districts surrounding the 12th and pairing the remaining residents of Bedford Stuyvesant with white voters substantial distances away.

A similar pattern exists among the Assembly Districts in, and bordering, Bedford Stuyvesant, and in the South Bronx.

Table E

Compactness Ratios
Central Brooklyn Assembly Districts

District No.	Majority Race	Ratio
54	Non-white	42.5
59	White	48.5
53	Non-white	62.2
55	Non-white	68.3
43	White	68.5
56	Non-white	72.0
57	Non-white	79.4
51	White	83.8
52	White	85.4
41	White	89.3
40	Non-white	94.8
44	White	112.9

Table F

Compactness Ratio

District No.	South Bronx Majority Race	Ratio
78	Non-white	25.8
77	Non-white	39.0
75	Non-white	48.4
76	White	68.4
84	White	71.2
85	White	75.5
81	White	87.5
79	Non-white	91.1

Similarly the Assembly District in central Harlem, the 79th, has a ratio of 38.1; the bordering majority-white districts which include substantial numbers of non-whites, the 68th and 71st, the ratios are 58.9 and 90.9.

These variances in compactness confirm the discriminatory purpose and effect of chapters 11, 76, 77 and 78.

Election Inspectors

The key election officials in the New York State are the election inspectors; there are approximately 20,000 of these part-time Board of Election employees in New York City alone. The inspectors are responsible for running the polling places on election day, where they exercise broad discretion in deciding who is eligible to vote and are the primary source of assistance, if any, for voters in need of help. The inspectors also man the polls several days a year during what is known as "local registration," when citizens can register to vote at the neighborhood location where they would normally vote. The overwhelming majority of persons registering to vote each year do so through the election inspectors at local registration.

Under New York law election inspectors are nominally chosen by the Board of Elections from lists furnished by the county chairmen of the two majority parties. Since both parties are represented, this is supposed to guarantee fairness. In fact, this is largely a charade designed to mask the actual system by which inspectors are chosen. The county chairman, in the first place, never submits as many names as there are vacancies, so the Board of Elections has no choice but to name every person on the chairman's list. So far as known, no person "nominated" by a party chairman has ever been denied appointment by the Board. Moreover, the selection of the inspectors is not actually made by the county chairman himself, but is delegated by him either to the neighborhood elected party official, the Assembly District leader, or to the officials of the predominant political club in the area. These clubs, in turn, are organized along the lines of the Senate, Assembly, or Congressional districts in the area, and are usually controlled by one of the incumbent elected officials.

The Board of Elections can only fire an inspector after notice and hearing; the county chairman, as a matter of state law, can fire any inspector on the spot at will. So far as is known, the Board has never fired an inspector. Inspectors are frequently fired by county chairman, when they fail to act as instructed at the polls, when they support the wrong candidates, or when the local political leaders who supported them are defeated.

Employment as an election inspector has traditionally been regarded as a minor patronage post, especially in lower income neighborhoods. It is given to political workers as a reward for long years of diligent labor for the candidates of the local dominant wing of the party. In return for this appointment inspectors are expected to work for and support particular candidates on election day, and to act on election day and during local registration in a manner which furthers the political interests of the officials or party

leaders who got them their jobs. There are virtually no Republican party primaries in New York City, and in a Democratic Primary the Republican inspectors have little or no interest in which Democrats may be denied the vote or refused assistance by Democratic inspectors.

All this is of critical importance to the district lines because the election inspectors are appointed and controlled by the dominant faction in the district—especially the Assembly District—involved, and which faction will be dominant depends on how those lines are drawn. Thus, if a Black community is put in a majority white district, the election inspectors in that community will be chosen and controlled by the white party and public officials elected by the white voters of the district. Because of this system, placing non-white voters in a majority district will have a discriminatory effect in one of three ways.

(1) Although the Board of Elections does not keep statistics on the race of inspectors, our interviews with Black and Puerto Rican political officials reveal that in many instances where non-white communities are a majority white districts the white politicians will appoint white election inspectors to run the polls in Black and Puerto Rican areas. Wholly aside from how these inspectors conduct themselves, Blacks and Puerto Ricans are bound to be deterred from seeking to register and vote when the polls in their neighborhoods are being run by whites. So far as is known, there are no white areas in which most or all of the election inspectors are black or Puerto Rican.

(2) In an election where Blacks and Puerto Ricans are known to support the candidate or candidates opposed by the election inspectors or the politicians who appointed them, discrimination against Black and Puerto Rican voters is common-place. Within the last several years two elections have been overturned in the three counties on this very ground. One, *Coalition For Education in School District One v. Board of Elections* (73 Civ. 3983, S.D.N.Y.), involved

a race between a white slate of candidates for election to a community school board, and an integrated Black, Puerto Rican and Chinese slate. The second, *Lowenstein v. Larkin*, 335 N.Y.S.2d 799 (1972), arose out of a race between two white candidates, an incumbent conservative supported by the election inspectors and an insurgent liberal supported by most of the Black and Puerto Rican voters.

(3) Where Black and Puerto Rican inspectors have been appointed as inspectors in non-white communities located in majority white districts, these inspectors have been summarily dismissed when a non-white insurgent ran against a white candidate supported by the white politicians in control of the district. In 1970, when the white incumbent in the 19th Senate District in Brooklyn, Jeremiah Bloom, was challenged by a Black candidate, Alan Fagan, Black inspectors were dismissed for this reason. In 1973, the leading white candidate for councilman at large in Brooklyn, Robert S. Steingut, was opposed by a Black candidate, Myrtle Whitmore. In the 41st Assembly District, which happened to be represented by Mr. Steingut's father, several Black inspectors, including Ms. Emma Parker, were fired for this reason.

This method of appointing, controlling, and dismissing election inspectors imparts a discriminatory effect to any district plan which places substantial numbers of Blacks and Puerto Ricans in majority white districts. A districting plan, unobjectionable of itself, may be discriminatory when combined with other election procedures. This was one of the reasons which prompted the Attorney General to disapprove the districting in *United States v. Georgia*, 41 U.S.L.W. 4570 (1973), where the effect of the proposed districting was aggravated by such devices as numbered posts and majority run-offs, and in *City of Petersburg v. United States*, 354 F.Supp. 1021 (D.D.C. 1972), aff'd —U.S.—, where the effect of a proposed annexation was rendered discriminatory by an at-large method of election. We main-

tain that Chapters 11, 76, 77 and 78 have a discriminatory effect in light of the election inspector system in New York, Bronx, and Kings Counties.

Racially Fair Districts

If the district lines had been drawn in a racially fair and neutral manner, the resulting districts would have been far more compact, and the number of non-whites in majority white districts substantially smaller and closer to the proportion of whites in majority black districts. Had the district lines been drawn without a discriminatory purpose or effect, they would have differed from the present lines in the following respects:

The Black and Puerto Rican ghetto in central Brooklyn, instead of being divided among 1 majority non-white district (12th) and four majority white districts (11th, 14th, 15th and 16th), would be divided into two majority non-white districts. The minority communities, now in majority white districts, which would be included in one of the majority non-white districts would include Bushwick, Fort Greene, East New York, and southern Bedford-Stuyvesant.

The 17th Senate District, instead of joining Black and Puerto Rican Bushwick with white Greenpoint, would join Bushwick with most of the Black and Puerto Rican district of Fort Greene, to form a majority non-white district. The 25th Senate District, most of which is located in Manhattan, would cross the river to include Greenpoint instead of crossing the river to include Fort Greene.

The Black and Puerto Rican communities in East New York, southern Bedford-Stuyvesant and eastern Bedford-Stuyvesant near Grand Army Plaza, instead of being divided among three majority white districts (16th, 19th and 23rd), would be consolidated with the majority non-white 18th district to yield two or three majority non-white districts.

The Black and Puerto Rican communities that constitute the northern third of the 41st, 43d and 44th Assembly Districts, instead of being divided among those three majority white districts, would be merged in a single majority non-white district.

The Black community in West Harlem, now in the majority white 71st Assembly District, and the Puerto Rican community in East Harlem, now in the majority white 68th Assembly District, would be merged with the population now in the majority non-white 70th, 72nd and 74th Assembly Districts to yield four majority non-white districts, one of them a majority Puerto Rican district including the substantial Puerto Rican population now divided among the 68th, 70th, and 72nd districts.

The Black and Puerto Rican population of the Lower East Side, now divided between the majority white 62nd and 63d Assembly Districts, would be consolidated into a single non-white majority district.

The Black and Puerto Rican communities in the 76th Assembly District, the eastern portion of the 85th Assembly District, and the southern portion of the 84th Assembly District, all three of which districts have white majorities, would be combined with the population of the majority non-white 78th and 79th districts to yield three majority non-white districts rather than two.

LEGAL DEFENSE FUND

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
10 Columbus Circle, New York, N.Y. 10019 • (212) 586-8397

March 21, 1974

Honorable J. Stanley Pottinger
Civil Rights Division
550 11th St., N.W.
Washington, D.C.

Dear Mr. Pottinger:

I would like to offer the following additional information, regarding Chapters 11, 76, 77 and 78, New York Laws of 1972, and in response to the Memorandum submitted by the Attorney General of New York in support of the district lines established by those provisions.

The Attorney General's Memorandum misconstrues the argument in our earlier Memorandum in several respects. First, we do not urge that the district lines must be redrawn to create the maximum number of majority non-white districts; rather, we contend only that the Voting Rights Act prohibits lines such as these which dilute large numbers of non-white votes. Second, our concern is not to spread the Black and Puerto Rican population in non-white districts among a larger number of non-white districts, but to consolidate the hundreds of thousands of non-white voters now divided among many majority white districts.

New York also suggests the 1972 lines should be approved because the proportion of non-white districts is comparable to the proportion of non-whites in the total population. Memorandum In Support, p. 9. This is among the relevant criteria, and was heavily relied on by the District Court in *Beer v. United States* in disapproving the New Orleans City Council lines under Section 5. Slip opinion, pp. 52 et seq. While this is an appropriate cri-

terion, the facts in this case do not warrant approval of the 1972 lines, but reveal instead gerrymandering as bad as was shown in *Beer*. The first useful comparison is between the proportion of the population that is non-white and the proportion of the districts with non-white majorities. In the instant case the proportion of the districts with non-white majorities is in every instance lower than the proportion of the population which is non-white.

Table I

	New York County	Bronx County	Kings County	New Orleans
Non-white Population	36.8%	45.7%	35.6%	34.5%
Percent of Congress- sional Districts with non-white majority	30.4% (1 of 3.29)	31.8% (1 of 3.15)	17.9% (1 of 5.57)	—
Percent of Senate Districts with non-white majority	30.4% (1.54 of 5.06)	40.4% (1.47 of 4.84)	11.7% (1 of 9.56)	—
Percent of Assembly District with non-white majority	(3 of 12.59) 23.8%	(4 of 12) 33.3%	(5 of 21.55) 23.2%	—
Percentage of City Council Districts with non-white majority	—	19.6% (1.32 of 6.72)	—	14.3% (1 of 7)

Of particular emphasis in *Beer* was the difference between the actual number of districts with non-white majorities, and the "theoretical" number which would have existed if the proportion of non-white districts was equal to the proportion of non-whites in the population. In this respect, as well, it is clear that the 1972 district lines have a discriminatory effect.

Table 2

District	Actual Non-white Districts	Theoretical Non-white Districts	Difference
<i>New York County</i>			
Congress	1	1.21	.21
Senate	1.54	1.86	.32
Assembly	3	4.63	1.63
<i>Bronx County</i>			
Congress	1	1.44	.44
Senate	1.47	2.21	.74
Assembly	4	5.50	1.50
City Council	1.32	3.07	1.75
<i>Kings County</i>			
Congress	1	2.02	1.02
Senate	1	3.05	2.05
Assembly	5	7.68	2.68
<i>New Orleans</i>			
City Council	1	2.42	1.42

It is apparent that, by the standards sanctioned in *Beer* at the urging of the Department of Justice, the 1972 District lines must be disapproved in the respects outlined in our previous memorandum.

Beer did not decide whether or not the purpose of the New Orleans City Council lines was discriminatory, but the standard for establishing such purpose urged by the Department of Justice was correct. The Government urged that the submitting authority could not meet its burden

of proof where the lines had the effect of minimizing non-white voting strength and were intended, in part to protect in office the incumbents. Slip opinion, pp. 47-48. The effect of the New York lines is apparent, and the Attorney General of New York candidly concedes that district lines which did not preserve in office the incumbent legislators—including white legislators with large numbers of non-whites in their districts—would have had little chance of passing the New York Legislature in 1972.

New York also urges that the Assembly lines in Bronx County should be approved because the Regular Democratic Organization in that County has agreed to support a non-white candidate in the 76th Assembly District. The value of this assurance is less than appears, however, for the white incumbent in the 76th Assembly District is not a member of the Regular faction of the Democratic party, but of the Reform faction, and has not in the past had Regular support. It appears to be the consensus of the politicians with whom we have consulted that a non-white candidate could not defeat Assemblyman Posner in the 76th Assembly District even with support of the Regular organization. Moreover, the election of non-white candidates dependent on the gratuitous support of such white organizations is no substitute for racially fair districts which assure equal weight to non-white votes. *Beer v. United States*, slip opinion pp. 21-22.

Yours sincerely,

/s/ ERIC SCHNAPPER
Eric Schnapper

ES:aa

cc: Gerald Jones
Richard Scanler
Michael Scadron
Herbert Teitelbaum
George Zuckerman

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74C-877

[Caption omitted]

Motion for Preliminary Injunction

Pursuant to Rule 65, Federal Rules of Civil Procedure, plaintiffs hereby move the Court for a preliminary injunction enjoining the defendants, their agents, servants, employees and all persons in active concert and participation with them from in any way enforcing Chapters 588, 589, 590, 591 and 599 of the New York Laws of 1974, on the grounds that

(1) As appears from the complaint herein, and the evidence adduced on June 20, 1974, there is substantial likelihood that plaintiffs will prevail on the merits of this action;

(2) Unless restrained by this Court, defendants will enforce the 1974 State Senate, Assembly and Congressional district lines as set forth in said Chapters;

(3) Such action by the defendants will result in irreparable injury, loss and damage to the plaintiffs, and

(4) The issuance of a preliminary injunction will not cause serious loss to defendants, but will prevent irreparable injury to the plaintiffs.

NATHAN LEWIN

DENNIS RAPPS

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74 C 877

[Caption omitted]

Supplementary Exhibits of Applicants for Intervention

Applicants for intervention, the N.A.A.C.P., etc., et al., submit the following exhibits in support of their motion to dismiss the complaint for failure to state a claim on which relief can be granted. Each of the annexed documents was part of the record upon which Assistant Attorney General Pottinger based his decision of April 1, 1974.

1. Letter of Congresswoman Shirley Chisholm to J. Stanley Pottinger, March 14, 1974;
2. Letter of Congressman Herman Badillo to J. Stanley Pottinger, March 13, 1974;
3. Letters of Councilman Samuel D. Wright to J. Stanley Pottinger, March 11, 1974;
4. Letter of Councilman Luis Olmedo to J. Stanley Pottinger, February 22, 1974;
5. Population statistics for the 1972 Senate, Assembly and Congressional districts, estimate prepared by New York on January 25, 1974;
6. Population statistics for the 1972 Senate, Assembly and Congressional districts, estimate prepared by New York on February 19, 1974.

Respectfully submitted,

JACK GREENBERG
ERIC SCHNAPPER
Suite 2030
10 Columbus Circle
New York, New York 10019

*Counsel for Applicants
for Intervention*

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

March 14, 1974

Honorable Stanley J. Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C.

Dear Mr. Pottinger:

I am writing to urge that, pursuant to Section 5 of the Voting Rights Act, you interpose an objection to Chapters 11, 76, 77 and 78 of New York Laws of 1972, which alter the Assembly, Senate, and Congressional lines in New York, on the ground that these provisions have the purpose and effect of discriminating on the basis of race.

The worst problems under these provisions are in Kings County. For many years district lines have been gerrymandered in Kings County so that number of districts with Black and Puerto Rican majorities is kept to a minimum. Before 1968, for example, the more than half million minority residents of Bedford-Stuyvesant were divided among five different Congressional Districts with white majorities, so that it was impossible for minority voters in Brooklyn to be represented in Congress by a Black or Puerto Rican. Even this egregious situation was not altered voluntarily by the white politicians who control redistricting in New York, but was changed only as the result of federal litigation.

According to the 1970 Census, there were approximately 1,772,000 whites and 830,000 non-whites in Kings County. Although only 467,000 are needed for a Congressional District, there is only a single Congressional District with a majority of Black and Puerto Rican voters, the 12th. There are only 93,547 whites in the 12th Congressional

District, compared to 436,510 Blacks and Puerto Ricans in the white Congressional Districts. Although only 304,000 are needed for a Senate District, there is only a single Senate District with a majority of Black and Puerto Rican voters, the 18th. There are only 44,081 whites in the 18th Senate District, compared to 553,935 Blacks and Puerto Ricans in white Senate Districts. Similarly, there are 361,707 non-whites in the majority white Assembly Districts in Brooklyn, but only 135,260 whites in Black and Puerto Rican Districts. The purpose and effect of the 1972 district lines was to minimize minority voting strength by placing hundreds of thousands of minority voters in white districts where their votes, in local elections, are virtually worthless.

Yours sincerely,

/s/ SHIRLEY CHISHOLM
Shirley Chisholm
Member of Congress

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

March 13, 1974

Honorable Stanley J. Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C.

Dear Mr. Pottinger:

In approximately two weeks the Department of Justice will make a determination as to whether the district lines for the U.S. Congress, the New York State Senate and Assembly and the New York City Councilmanic elections in New York, Bronx and Kings Counties discriminate against minority group persons.

I am aware that the Civil Rights Division has already received correspondence from political and civic leaders charging that these lines discriminate against Puerto Ricans and Blacks in the three counties and urging that they be rejected. I join in calling upon the Justice Department to fulfill its mandate under the Voting Rights Act and reject these lines.

Without repeating each instance in which the lines discriminate against Blacks and Puerto Ricans, I would like to call to your attention some examples in each county where minority groups are excluded for fair political representation. On the East Side of Manhattan, in the area commonly referred to as East Harlem, Puerto Ricans comprise the overwhelming majority. Nevertheless, they are divided into assembly districts in a manner making it virtually impossible for them to elect a Puerto Rican candidate to the Assembly.

A similar situation exists in the Williamsburg section of Brooklyn. There Puerto Ricans are in the vast majority yet are precluded from electing either a State Senator or Assemblyman because their community is carved up by the district lines.

Finally, in the Bronx, where the minority population approaches 50 per cent, there is only one minority City Councilman of the eight Councilmen representing the borough. This bizarre situation is attributable mainly to the way in which councilmanic district lines are drawn.

There are but three examples of a pervasive pattern of discrimination in the drawing of the district lines. I am confident that careful analysis by your staff will reveal many others.

In light of the foregoing I believe very strongly that the present political district lines in the counties of New York, the Bronx and Kings are racially gerrymandered and must be rejected. I am hopeful that you will give these comments your fullest and most careful consideration.

Sincerely,

/s/ HERMAN BADILLO
Herman Badillo
Member of Congress

HB:sjb

THE COUNCIL
OF
THE CITY OF NEW YORK
CITY HALL
NEW YORK, N.Y. 10007

SAMUEL D. WRIGHT
Councilman, 26th District, Brooklyn
216 Rockaway Avenue
Brooklyn, N. Y. 11233
385-5100

March 11, 1974

Honorable Stanley J. Pottinger
Civil Rights Division
Department of Justice
Washington, D.C.

Attention: Richard Feldin

Dear Mr. Pottinger:

I am writing as a Minority Legislator (Councilman 26th C. D.), as former Assemblyman and a party to N.A.A.C.P. lawsuit, to urge that the Attorney General interpose an objection to Chapters 11, 76, 77 and 78 of New York Laws of 1972, which changed the lines of Congressional, Senate and Assembly districts in Bronx, Kings and New York Counties.

As you are doubtlessly aware, the lines as presently constituted put most Blacks and Puerto Ricans in districts with substantial white majorities. The lines were deliberately drawn in this fashion to disenfranchise the minority community by fragmenting their majorities in different districts around the core, which means that in New York it is almost impossible for a Black or Puerto Rican candidate to be elected from such a majority white district. Lines such as these, which pair off Black and Puerto Rican communities with larger white areas, necessarily dilute the

value of minority votes and assure the defeat of minority candidates.

You should also be aware that the 1972 lines were not, Legislators, in any meaningful sense, drawn in Albany or by the Legislature; on the contrary, the lines were generally drawn in each county by the respective Republican and Democratic County Party Chairmen. The primary purpose of these Chairmen was to preserve in office the incumbent Legislators, despite the substantial increase in minority voters. The lines were drawn with this goal in mind, despite the objections of the Black and Puerto Rican political leaders in Albany, of which I was one. In fact, I was the Chairman of the Black and Puerto Rican New York State Legislative Caucus.

Our efforts to obtain racially fair district lines were made and lost before redistricting was printed to or voted on by the Legislature.

I would urge the Attorney General to object specifically to the large number of Blacks and Puerto Ricans gerrymandered into the following majority white districts:

1. In Brooklyn, the 11th, 15th and 16th Congressional Districts;
2. In Brooklyn, the 41st, 43rd, 44th and 51st Assembly Districts;
3. In Brooklyn, the 16th, 17th, 19th, 23rd and 25th Senatorial Districts.

In these areas, which are compact and contiguous to each other with a constituency of minority people, effective representation for the problems of this community is denied because of said gerrymandering.

In addition to denying a Second Congressional District, which could be easily accommodated by a fair reapportion-

ment, insult was compounded to injury by drawing a Senatorial District (the 25th S. D.) which starts in the lower East Side of Manhattan and crosses the East River, going right to the heart of Bedford-Stuyvesant in Brooklyn.

Such outrageous flouting of racial equity must not be allowed to stand. This is why the Civil Rights Act was enacted in the first place. We are calling upon your Department to right the wrongs inflicted upon us by dominate, unfair White majority.

Attached is a map which would be more reflective of a fair reapportionment for Kings County.

Yours most respectfully,

/s/ SAMUEL D. WRIGHT
Samuel D. Wright
Councilman, 26th District

sf
Enclosure

THE COUNCIL
OF
THE CITY OF NEW YORK
CITY HALL
NEW YORK, N.Y. 10007

SAMUEL D. WRIGHT
216 Rockaway Avenue
Brooklyn, N. Y. 11233
385-5100

March 11, 1974

Honorable Stanley J. Pottinger
Civil Rights Division
Department of Justice
Washington, D.C.

Attention: Richard Feldin

Re: *As Addendum to Communication This Date*

Dear Mr. Pottinger:

It is may hope that the following information will assist you in your efforts to bring the pending litigation to a successful conclusion:

a) the population of Central Brooklyn is 1,041,505. Of that population

550,537 are Black;
300,901 are Puerto Rican;
190,077 are White.

In political terms, this population can conceivably contain

- 1) Two Congressional Districts with a minimum of 468,000 persons per Congressional District;
- 2) Three Senatorial Districts with a minimum of 303,000 persons per Senatorial District;

- 3) Three Councilmanic Districts with a minimum of 239,000 persons per Councilmanic District;
- 4) Eight Assembly Districts with a minimum of 121,500 persons per Assembly District.

It is only with this compilation of the population in mind that fair and equitable division of the district lines for political representation for all of the people of our City can be achieved, because these areas are compact and contiguous with the constituency contained therein.

Most respectfully yours,

/s/ SAMUEL D. WRIGHT
Samuel D. Wright
Councilman, 26th District

sf

THE COUNCIL
OF
THE CITY OF NEW YORK
CITY HALL
NEW YORK, N.Y. 10007

LUIS A. OLMEDO
Councilman, 27th District, Brooklyn
314 Grand Street
Brooklyn, N. Y. 11211
963-3440
566-4397

February 22, 1974

Mr. J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger:

This is in reply to your letter of February 16, which requested my views and comments on recent reapportionments of New York State.

I would like to limit my comments to the Borough of Brooklyn, in which I have lived for twenty years, and in which I represent a district in the City Council.

In my opinion, the State Assembly, State Senate, and United States Congressional lines have been drawn to exclude Black and Puerto Rican representation. In no legislative body, whether on the city, state, or federal level, are the Borough's Black and Puerto Rican citizens represented by Black or Puerto Rican representatives proportionate to the population. The reasons for this underrepresentation are, of course, complex. They include lack of voter participation and lack of political structure at the community level. But it relates directly, in one way, to the current district lines as well.

Ethnic groups in New York City have strong ethnic identification with their political leaders. This is especially true for groups who are just entering the political process. New York's Puerto Ricans and Blacks are no exception to these rules. The involvement and participation of these groups therefore depend to some extent on their perceived ability to elect leaders of their own groups.

The recent political experience of my own district confirms this. The activity of the Williamsburg and Brunswick Puerto Rican communities during the June, 1973 primary elections, in which there were serious Puerto Rican candidates for the Mayoralty and the local Council seat, surpassed all previous levels for municipal elections.

With these considerations in mind, I therefore think that new district lines are in order for Brooklyn to meet the requirements of the 1970 Voting Rights Act. I think that the State Assembly and the State Senate lines should be redrawn to provide more Assembly and Senate seats for Puerto Ricans and Blacks.

The Congressional lines pose a somewhat more difficult problem. While the lines should be re-drawn to provide more Puerto Rican and Black representation, they must be redrawn in a way that will not exclude any major ethnic group in Brooklyn from a decent opportunity to elect a Congressman. I would therefore oppose any re-districting which did not provide the Puerto Rican communities of Brooklyn from at least a chance to elect federal representatives.

Thank you for your consideration, and I would welcome the chance to give any further information or views that may prove useful.

Sincerely,

/s/ LUIS A. OLMEDO
Luis A. Olmedo

POPULATION STATISTICS FOR EXISTING CONGRESSIONAL
DISTRICTS

Congressional District	Total Pop.	White	Negro	Puerto Rican	Other Races
<i>KINGS COUNTY</i>					
11 pt.	263,379	193,584	46,618	21,333	1,580
12	467,738	93,547	315,255	55,660	3,274
13	467,737	446,638	9,354	8,419	3,274
14	467,723	284,376	87,464	90,738	5,612
15	467,730	402,247	25,257	36,015	4,209
16	467,705	351,714	95,411	15,901	4,677
<i>NEW YORK COUNTY</i>					
17 pt.	172,284	111,985	11,198	22,225	26,876
18	467,533	407,688	17,766	31,792	9,818
19	467,656	165,082	228,216	68,278	6,547
20 pt.	431,760	318,207	66,059	36,699	10,794
<i>BRONX COUNTY</i>					
10 pt.	339,707	264,631	34,650	37,368	3,057
20 pt.	36,056	33,604	649	288	1,550
21	466,674	183,869	138,136	140,002	4,200
22	467,805	333,077	72,042	58,476	4,210
23 pt.	161,459	117,542	36,651	5,973	1,453

* Individual populations do not add up to the district total because of rounding-off of percentages.

POPULATION STATISTICS FOR EXISTING SENATE DISTRICTS

Senate District	Total Pop.	White	Negro	Puerto Rican	Other Races
<i>KINGS COUNTY</i>					
15 pt.	17,523	17,312	53	123	350
16	304,004	160,818	101,841	39,216	1,824
17	304,002	190,913	41,952	68,400	2,432
18	304,002	44,081	238,643	19,456	2,128
19	304,004	247,155	47,729	6,080	3,344
20	304,002	300,354	1,824	608	1,216
21	304,001	274,817	4,256	22,800	2,432
22	304,000	286,084	6,992	8,816	2,128
23	304,001	201,249	65,056	32,832	5,168
25 pt.	152,471	45,131	78,675	26,682	1,982
<i>NEW YORK COUNTY</i>					
24 pt.	8,558	3,398	804	385	3,971
25 pt.	151,530	86,069	14,243	33,488	17,729
26	304,001	292,753	3,952	2,736	4,560
27	304,001	255,057	18,544	20,672	9,728
28	304,001	141,056	132,848	24,016	6,080
29	304,001	165,681	109,744	24,016	4,864
30 pt.	163,141	72,924	44,863	42,580	2,936
<i>BRONX COUNTY</i>					
30 pt.	140,863	56,063	35,215	48,175	1,408
31	304,000	164,160	69,008	67,792	3,040
32	304,001	126,160	104,576	69,920	3,344
33	304,002	227,089	42,864	30,704	3,334
34	303,998	267,518	24,928	9,728	1,823
35 pt.	114,837	103,468	4,708	5,053	1,607

* Individual populations do not add up to the district total because of rounding-off of percentages.

POPULATION STATISTICS FOR EXISTING ASSEMBLY DISTRICTS

Assembly District	Total Pop.	White	Negro	Puerto Rican	Other Races
<i>KINGS COUNTY</i>					
38 pt.	65,884	44,274	12,584	8,565	461
39	120,767	101,806	14,251	3,985	603
40	120,769	42,752	57,124	20,048	845
41	120,767	94,681	22,945	2,053	1,086
42	120,767	118,955	966	362	463
43	120,767	83,933	31,037	3,381	2,294
44	120,768	90,455	21,979	6,521	1,811
45	120,769	119,078	845	120	603
46	120,769	109,054	6,280	4,710	603
47	120,767	119,801	242	242	483
48	120,768	117,024	362	2,415	966
49	120,769	119,078	845	362	603
50	120,768	106,155	1,207	12,318	1,207
51	120,767	105,550	3,140	10,748	1,328
52	120,768	88,039	12,077	18,961	1,690
53	120,768	19,081	95,165	4,831	1,690
54	120,769	31,521	69,925	18,719	603
55	120,768	24,998	76,084	18,840	724
56	120,769	16,908	93,475	9,662	603
57	120,768	60,263	33,964	24,757	2,053
58	120,768	22,039	6,159	25,482	966
59	120,768	70,166	21,859	27,777	966

NEW YORK COUNTY

62 pt.	71,490	37,246	4,504	8,650	21,018
63	122,312	74,121	12,965	29,844	5,381
64	122,312	107,145	5,381	7,338	2,446
65	122,312	114,850	2,446	2,201	2,690
66	122,312	119,377	1,100	366	1,345
67	122,312	101,886	9,051	8,317	3,057
68	122,312	100,785	9,173	10,274	2,079
69	122,312	88,676	18,224	11,986	3,302
70	122,312	30,578	64,947	24,829	1,834
71	122,312	68,494	35,593	15,555	3,669
72	122,312	34,981	64,581	21,405	1,345
73	122,311	105,187	7,339	7,950	1,834
74	122,312	19,325	95,770	6,360	856

POPULATION STATISTICS FOR EXISTING ASSEMBLY DISTRICTS
(continued)

Assembly District	Total Pop.	White	Negro	Puerto Rican	Other Races
<i>BRONX COUNTY</i>					
75	122,641	56,415	30,047	35,320	853
76	122,637	66,960	31,510	22,565	1,471
77	122,643	50,161	28,944	42,680	981
78	122,641	36,056	55,801	29,679	1,226
79	122,649	48,569	33,974	38,389	1,717
80	122,641	116,018	2,208	3,802	736
81	122,642	93,575	20,113	7,971	981
82	122,641	86,829	17,047	17,415	1,340
83	122,640	111,348	4,292	5,641	858
84	122,644	95,171	14,962	10,056	2,452
85	122,641	84,254	17,047	20,113	1,226
86	122,641	94,188	23,424	4,047	981

* Individual populations do not add up to the direct total because of rounding-off of percentages.

EXHIBIT 9-B

POPULATION STATISTICS FOR EXISTING ASSEMBLY DISTRICTS

Assembly District	Total Pop.	White	Negro	Puerto Rican	Other Races
<i>KINGS COUNTY</i>					
38 pt.	65,884	41,770	13,967	9,817	329
39	120,767	101,565	14,492	4,106	604
40	120,769	28,864	67,389	24,033	483
41	120,767	94,440	23,308	2,053	1,087
42	120,767	119,076	966	362	483
43	120,767	83,088	31,882	3,502	2,295
44	120,768	89,248	22,825	6,884	1,812
45	120,769	119,078	845	242	604
46	120,769	108,934	6,401	4,831	604
47	120,767	119,801	242	242	483
48	120,768	117,145	242	2,536	845
49	120,769	119,078	845	362	064
50	120,768	105,430	604	13,768	1,087
51	120,767	104,826	2,898	11,835	1,208
52	120,768	83,571	13,164	22,463	1,570
53	120,768	15,217	98,909	5,072	1,570
54	120,769	16,666	81,640	22,101	242
55	120,768	8,816	89,127	22,463	483
56	120,769	8,575	101,204	10,507	483
57	120,768	46,858	40,820	31,037	2,053
58	120,768	81,639	6,159	32,366	604
59	120,768	57,606	26,690	35,989	604

NEW YORK COUNTY

62 pt.	71,490	33,243	4,647	9,866	23,735
63	122,312	61,278	15,167	39,507	6,360
64	122,312	106,656	5,382	7,828	2,446
65	122,312	114,851	2,446	2,324	2,813
66	122,312	119,377	1,101	367	1,345
67	122,312	101,030	9,296	8,929	3,058
68	122,312	99,684	9,418	11,253	2,079
69	122,312	85,863	19,570	13,332	3,425
70	122,312	9,418	79,992	31,190	1,712
71	122,312	62,379	39,507	16,512	3,914
72	122,312	18,224	76,934	25,930	1,223
73	122,311	104,576	7,461	8,562	1,835
74	122,312	14,066	100,663	6,727	856

EXHIBIT 9-B

POPULATION STATISTICS FOR EXISTING ASSEMBLY DISTRICTS
(continued)

Assembly District	Total Pop.	White	Negro	Puerto Rican	Other Races
<i>BRONX COUNTY</i>					
75	122,641	33,113	39,736	49,670	245
76	122,637	56,413	37,282	27,593	1,349
77	122,643	16,066	41,085	65,369	123
78	122,641	11,160	71,622	39,000	858
79	122,649	18,888	46,067	55,805	1,349
80	122,641	116,018	2,085	3,925	613
81	122,642	92,227	21,094	8,585	858
82	122,641	82,415	18,764	20,358	1,104
83	122,640	111,725	4,292	5,887	858
84	122,644	93,455	15,821	11,038	2,453
85	122,641	78,490	19,255	24,038	981
86	122,641	93,575	24,038	4,170	858

* Calculations done according to formula outlined on pages 5 & 6 of our submission letter of January 30, 1974.

EXHIBIT 9-B

POPULATION STATISTICS FOR EXISTING SENATE DISTRICTS

Senate District	Total Pop.	White	Negro	Puerto Rican	Other Races
<i>KINGS COUNTY</i>					
15 pt.	17,523	17,313	35	123	35
16	304,004	142,578	114,914	45,297	1,216
17	304,002	199,425	37,088	65,968	1,216
18	304,004	27,664	253,843	20,672	1,824
19	304,004	246,243	48,337	6,080	3,344
20	304,002	300,354	1,824	912	1,216
21	304,001	274,513	3,344	24,320	2,128
22	304,000	286,064	6,992	8,816	2,128
23	304,001	191,217	70,832	36,784	4,864
25 pt.	152,471	24,700	93,770	32,324	1,677
<i>NEW YORK COUNTY</i>					
24 pt.	8,558	3,184	822	402	4,151
25 pt.	151,530	70,461	16,214	43,035	21,820
26	304,001	292,573	3,952	2,736	4,560
27	304,001	253,233	18,848	22,192	9,728
28	304,001	128,896	142,880	26,144	6,080
29	304,001	155,649	117,648	26,144	4,560
30 pt.	163,141	45,027	57,752	57,589	2,773
<i>BRONX COUNTY</i>					
30 pt.	140,863	17,044	49,725	73,390	704
31	304,000	129,808	84,512	87,552	2,128
32	304,001	79,648	131,024	90,592	2,736
33	304,002	221,009	45,904	34,048	3,040
34	303,998	267,214	25,232	10,032	1,824
35 pt.	114,837	103,353	4,708	5,283	1,493

* Calculations done according to formula outlined on pages 5 & 6 of our submission letter of January 30, 1974.

EXHIBIT 9-B

POPULATION STATISTICS FOR EXISTING CONGRESSIONAL DISTRICTS

Congressional District	Total Pop.	White	Negro	Puerto Rican	Other Races
<i>KINGS COUNTY</i>					
11 pt.	263,379	189,106	49,779	23,177	1,317
12	467,738	47,242	355,013	63,145	2,339
13	467,737	447,157	8,887	8,419	3,274
14	467,723	247,893	102,899	112,254	4,677
15	467,730	399,441	25,257	39,289	3,742
16	467,705	348,908	97,750	16,370	4,677
<i>NEW YORK COUNTY</i>					
17 pt.	172,284	104,749	11,543	25,498	30,322
18	467,533	405,819	17,766	34,597	9,818
19	467,656	118,785	263,290	79,969	6,080
20 pt.	431,760	310,435	69,945	40,154	10,794
<i>BRONX COUNTY</i>					
10 pt.	339,707	258,177	36,688	42,124	2,718
20 pt.	36,056	33,604	613	288	1,550
21	466,674	76,535	187,603	200,203	2,333
22	467,805	319,043	79,059	66,428	3,742
23 pt.	161,459	116,250	37,781	6,135	1,292

* Calculations done according to formula outlined on pages 5 & 6 of our submission letter of January 30, 1974.

ADDENDUM TO EXHIBIT 9B
POPULATION STATISTICS FOR EXISTING DISTRICTS

Assembly District	Total Pop.	White	Negro	Puerto Rican	Other Races
<i>PART KINGS, PART QUEENS</i>					
38	120,768	96,380	14,022	9,982	439
<i>PART NEW YORK, PART RICHMOND</i>					
62	122,311	76,811	9,540	11,130	24,829
Senate District					
<i>PART KINGS, PART QUEENS</i>					
15	304,005	300,053	1,216	1,520	1,216
<i>PART NEW YORK AND RICHMOND</i>					
24	304,001	277,249	15,504	4,256	6,992
<i>PART NEW YORK, PART KINGS</i>					
25	304,001	95,161	109,984	75,359	23,497
<i>PART NEW YORK, PART BRONX</i>					
30	304,004	62,071	107,477	130,979	3,477
<i>PART BRONX, PART WESTCHESTER</i>					
35	304,001	277,195	16,814	7,364	2,628
Congressional District					
<i>PART BRONX, PART QUEENS</i>					
10	468,887	363,588	57,098	44,449	3,622
<i>PART KINGS, PART QUEENS</i>					
11	467,693	349,084	83,082	33,188	2,339
<i>PART NEW YORK AND RICHMOND</i>					
17	467,727	360,150	50,515	27,128	29,467
<i>PART NEW YORK, PART BRONX</i>					
20	467,816	344,039	70,558	40,442	12,344
<i>PART BRONX, PART WESTCHESTER</i>					
23	467,972	400,388	56,478	7,974	3,131

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74-C-877

[Caption omitted]

Notice of Motion to Dismiss

PLEASE TAKE NOTICE that the defendant will bring the attached Motion to Dismiss based on the attached papers before the Honorable Judge Walter Bruchhausen at the United States Court for the Eastern District of New York, Court Room 3, 225 Cadman Plaza East, Brooklyn, New York, at 10:00 a.m., on July 5, 1974.

Dated this 25th day of June, 1974.

DAVID TRAGER

United States Attorney

RICHARD SELDIN

Attorney

Department of Justice

Washington, D.C. 20530

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74-C-877

[Caption omitted]

Motion to Dismiss

Defendant, William B. Saxbe, Attorney General of the United States, pursuant to Rule 12b(1) F.R. Civ. Proc., respectfully moves the Court to dismiss this action with respect to him, and submits as grounds therefor:

1. This Court lacks jurisdiction to hear the complaint as alleged against defendant William B. Saxbe since the relief sought as against the Attorney General is grantable, if at all, only by the United States District Court for the District of Columbia.

2. The plaintiffs lack standing to maintain the suit insofar as it is alleged against the Attorney General of the United States.

In support of this motion, the Court is respectfully referred to the attached memorandum in behalf of defendant William B. Saxbe, Attorney General of the United States.

DAVID TRAGER
United States Attorney

GERALD W. JONES
RICHARD SELDIN
Attorneys
Department of Justice
Washington, D.C. 20530

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74-C-877

[Caption omitted]

Plaintiffs' Motion for Summary Judgment

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiffs hereby move, by their undersigned counsel, for the entry of summary judgment in their favor, declaring that Chapters 588, 589, 590, 591 and 599 of the 1974 New York Laws are unconstitutional under the Fourteenth and Fifteenth Amendments and permanently enjoining their administration and implementation by the defendants and any other agent or agency of the State of New York or of the City of New York. This motion is based upon the complaint herein and the exhibits attached thereto, the sworn testimony presented at the hearing before the Court on June 20, 1974, the exhibits introduced in evidence at the hearing, and the Memorandum of Law submitted in support of this motion. The motion is made in addition to, and not in place of, the plaintiffs' Motion for Preliminary Injunction which was filed on June 20, 1974, for and in support of which testimony was presented on that date. As explained in the Memorandum of Law submitted today, the undisputed material facts which compel entry of judgment for plaintiffs on the merits emerge from the testimony given on June 20. It is appropriate, therefore, for this Court to enter final judgment for the plaintiffs at this time. At all events, should the Court be left with some question as the appropriateness of summary judgment and wish to proceed to a more extensive trial on the merits, the plaintiffs are entitled, at the very least, to the entry of a preliminary injunction granting interim relief to be effective for the 1974 primary and general election.

The plaintiffs submit that, for purposes of this motion, there is no genuine issue as to the following material facts:

(1) The individual plaintiffs are voting-age citizens of the Jewish faith and are members of the *Hasidic* Jewish community of Williamsburgh, located in the County of Kings.

(2) The organizational plaintiff is a community-wide organization representing smaller groups within the Jewish population of Williamsburgh. It has been active in educating and encouraging the *Hasidim* of Williamsburgh to register and vote in national and local elections.

(3) The *Hasidic* community of Williamsburgh is a unitary ethnic group of extremely devout Jews who have particular legislative interests on the national and local level which require effective communication with national and local legislators.

(4) The *Hasidic* community of Williamsburgh settled in the area where they now reside after the Second World War. Most of the founders of the community were refugees displaced from their homes in Europe by the war and removed to concentration camps.

(5) At no time since the establishment of the *Hasidic* community of Williamsburgh until May 1974 was the entire area inhabited by the *Hasidic* community of Williamsburgh assigned to more than a single State Senate and State Assembly District. The area was recognized in all previous apportionments as a unitary community that should be within the boundaries of one Congressional, State Senate and State Assembly District.

(6) Chapters 588, 589, 590, 591 and 599 of the 1974 New York Laws divide the *Hasidic* community of Williamsburgh between the 57th and 56th Assembly Districts and between the 25th and 23rd Senate Districts so that

approximately 20,000 *Hasidic* residents live in the 57th Assembly District and 25th Senate District, and approximately 15,000 *Hasidic* residents live in the 56th Assembly District and 23rd Senate District.

(7) The effect of the division of the *Hasidic* community by the 1974 reapportionment is to reduce its voting strength and thereby to abridge the right to vote of individuals who are members of the *Hasidic* community.

(8) The sole reason for dividing the *Hasidic* community was to achieve a nonwhite population of at least 65 percent in each of the 56th and 57th Assembly Districts and in the 23rd and 25th Senate Districts. If the New York Legislature did not believe it was required to achieve this specified percentage of nonwhite residents in each of the districts, it would not have severed the *Hasidic* community between two assembly and Senatorial districts.

(9) The decision of the Attorney General of the United States that required an increased percentage of nonwhite residents in the 56th Assembly District and in the 25th Senate District was not based on any finding or evidence of any past history of purposeful or deliberate racial gerrymandering to dilute or minimize the votes of minority races in the County of Kings. It was based exclusively on his conclusion that the 1972 reapportionment lines showed "high minority concentration" in certain districts, and that non-white residents could have been assigned to neighboring districts and thereby have maximized nonwhite voting strength.

(10) Under the 1972 reapportionment, the *Hasidic* community of Williamsburgh was in an Assembly District which, according to the 1970 census, was 61.5% nonwhite. Because the Attorney General concluded that this was an insufficiently high percentage of nonwhite residents to comprise a "substantial nonwhite majority," and because representatives of the New York Legislature were led to

believe that a 65% figure was the minimum that could satisfy the Department of Justice, a plan that would have kept the *Hasidic* community intact in the 57th Assembly District but would have achieved only a 63.4% nonwhite majority was rejected by the Legislature.

(11) The harmful effect of the division of the *Hasidic* community by the 1974 reapportionment lines on registration and voting efforts in that community is irreparable if no corrective action is taken before the primary and general elections. Because of the "persecution complex" of the individuals in that community and their tendency to self-imposed isolation, the implementation of Chapters 588, 589, 590, 591 and 599 for the 1974 primary and general election will probably destroy the efforts made over the last six years to absorb the citizens of the community into the democratic process.

On the basis of the above facts, summary judgment should be rendered for the plaintiffs and an injunctive and declaratory decree entered immediately.

/s/ NATHAN LEWIN

/s/ DENNIS RAPPS

Attorneys for Plaintiffs

TABLE 1

TOTAL AND VOTING AGE
POPULATION KINGS COUNTY 1970

	White	Black	Puerto Rican
Total Population	1,675,216	654,989	271,769
Population over 17	1,260,957	381,156	138,945
Percent of total population eligible to vote	75.3%	58.2%	51.1%

Source: United States Census, General Social and Economic Characteristics, New York, pp. 615, 644, 661. White statistics are obtained by subtracting sum for Blacks and Puerto Ricans from statistics for the total population.

TABLE 2

KINGS COUNTY
POPULATION IN 1970 WITH
DIFFERENT RESIDENCE IN 1965

	<u>Non-White Population</u>	<u>White Population</u>
Population over 5	1,567,739	808,525
Prior residence in different county	87,113 (5.6%)	58,026 (7.6%)
Prior residence in different state	23,381 (1.5%)	17,542 (2.7%)
Prior residence aboard	54,158 (3.6%)	55,947 (6.9%)
Prior residence unknown	75,303 (4.8%)	61,443 (7.6%)

Source: United States Census, General Social and Economic Characteristics, New York, pp. 609, 644, 661. Non-white statistics are totals for Black and Puerto Rican population. White statistics are totals for the entire population minus the non-white totals.

TABLE 3

NON-WHITE POPULATION
OF 1972 KINGS COUNTY DISTRICTS
JANUARY AND FEBRUARY FORMULA

<u>District</u>	<u>January Formula</u>	<u>February Formula</u>
<i>Congress</i>		
11 (part)	69,795 (26.5%)	74,273 (28.2%)
12	374,189 (80.0%)	420,497 (89.9%)
13	21,047 (4.5%)	20,580 (4.4%)
14	183,814 (39.3%)	219,820 (47.0%)
15	65,481 (14.0%)	68,288 (14.6%)
16	115,989 (24.8%)	118,797 (25.4%)
<i>Senate</i>		
15 (part)	476 (2.8%)	193 (1.1%)
16	142,881 (47.0%)	161,427 (53.1%)
17	112,784 (37.1%)	104,272 (34.3%)
18	279,227 (91.9%)	276,339 (90.9%)
19	57,153 (18.8%)	57,761 (19.0%)
20	3,648 (1.2%)	3,952 (1.3%)
21	29,488 (9.7%)	29,792 (9.8%)
22	17,936 (5.9%)	17,936 (5.9%)
23	102,956 (33.9%)	112,480 (37.0%)
25 (part)	107,339 (70.4%)	127,771 (83.8%)

TABLE 3 (continued)

<u>District</u>	<u>January Formula</u>	<u>February Formula</u>
<i>Assembly</i>		
38 (part)	21,610 (32.8%)	15,283 (23.2%)
39	18,839 (15.6%)	19,202 (15.9%)
40	78,017 (64.6%)	91,905 (76.1%)
41	26,084 (21.6%)	26,448 (21.9%)
42	1,811 (1.5%)	1,811 (1.5%)
43	36,712 (30.4%)	37,679 (31.2%)
44	30,311 (25.1%)	31,521 (26.1%)
45	1,568 (1.3%)	1,691 (1.4%)
46	11,593 (9.6%)	11,839 (9.8%)
47	967 (0.8%)	967 (0.8%)
48	3,743 (3.1%)	3,673 (3.0%)
49	1,180 (1.5%)	1,811 (1.5%)
50	14,732 (12.2%)	15,459 (12.8%)
51	15,216 (12.6%)	15,941 (13.2%)
52	32,728 (27.1%)	37,197 (30.8%)
53	101,686 (84.2%)	105,551 (87.4%)
54	89,247 (73.9%)	103,983 (86.1%)
55	95,648 (79.2%)	112,073 (92.8%)
56	103,740 (85.9%)	117,194 (92.9%)
57	60,774 (50.3%)	73,910 (61.2%)
58	32,607 (27.0%)	39,029 (32.3%)
59	50,602 (41.9%)	63,283 (52.4%)

Explanation—The “January Formula,” was used to calculate the statistics regarding racial composition of districts in the tables prepared by New York for submission to Assistant Attorney General Pottinger, and dated January 25, 1974. The total population of each district was computed by adding the population of each block using the computer tape known as the “Third Count” tape. Since ethnic data by block was not available, the percentage of the district of each race was estimated based on census tract data, a census tract encompassing several blocks. This data was on “Fourth Count” computer tape. These percentages were multiplied times the total population of each district to yield the actual population of each race.

In the “January Formula” the census tract data employed was based on a computer program pursuant to which, if a Puerto Rican stated that his “race” was white or Black but his ancestry Puerto Rican, he was counted twice, as both a white or Black and a Puerto Rican. Such an error would tend to inflate the proportion of the population which was Black white; this in turn reduced the apparent Puerto Rican proportion. When that reduced proportion was multiplied times the population of a district to yield the Puerto Rican population, the error resulted in an inaccurately low number of Puerto Ricans. This error could tend to raise or lower the apparent *total* of non-white population of a district.

The “February Formula” was an attempt to correct this error. Unfortunately the number of Puerto Ricans in Kings County who had identified themselves as “white” or “Black” was not known. This Formula was based on a guess, in the light of national figures, as to how many Puerto Ricans had been double counted. The guess used assumed that virtually all Puerto Ricans had been identified as white and thus double counted. This guess was used to calculate the figures on the tables prepared by

New York for submission to Assistant Attorney General Pottinger, and dated February 1974.

As to the actual non-white population as of the 1970 census, all that can be said with certainty is that it lies somewhere between the January and February figures.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74-C-877

[Caption omitted]

Affidavit

MARIAN B. SCHEUER, being duly sworn, deposes and says as follows:

1. I am a law student working for the N.A.A.C.P. Legal Defense and Educational Fund of New York, New York.

2. On June 27, 1974, I examined the records of the New York City Board of Education at 345 Adams Street, Brooklyn, New York.

3. According to plaintiffs' complaint the Hassidic Community of Williamsburgh is located in census tracts 509, 525, 529, 531, 533, 537, 539, 545, 547 and 549. The area is encompassed in election districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13 of the 57th Assembly District, as that district existed under the 1972 lines.

4. According to the records of the Board of Elections, there were approximately 8,047 persons registered to vote in these twelve election district in 1972. A total of 7,644 persons actually voted in the November 1972 presidential elections in these districts, a turn out rate of 95.0%.

5. According to the records of the Board of Elections, there were approximately 3,565,147 persons registered to vote in the City of New York in 1972. A total of 2,600,507 persons voted in the November, 1972, presidential elections in New York City, a turnout rate of 73.0%.

6. According to the records of the Board of Elections, there were approximately 8,223 persons registered to vote in the twelve Hassidic election districts in 1973. A total of 5,161 persons actually voted in the November, 1973, mayoral elections in these districts, a turn out rate of 62.8%.

7. According to the records of the Board of Elections, there were approximately 3,161,666 persons registered to vote in the City of New York in 1973. A total of 1,771,316 persons voted in the November, 1973, mayoral elections in New York City, a turn out rate of 55.0%.

8. According to the records of the Board of Elections, a total of only 68 persons registered to vote in the twelve Hassidic election districts in the period from December 7, 1973 to June 22, 1974. Of these, 39 had been previously registered in another county in New York City or had only become old enough to vote after October of 1973.

/s/ MARIAN B. SCHEUER
Marian B. Scheuer

Sworn to before me this
27th day of June, 1974

/s/ ERIC SCHNAPPER
Notary Public

Eric Schnapper
Notary Public, State of New York
No. 31-9822985
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

Civil Action No. 74C-877

[Caption omitted]

Affidavit

COUNTY OF NEW YORK
STATE OF NEW YORK ss.:

ERIC SCHNAPPER, being duly sworn, deposes and says:

1. I am an attorney employed by the N.A.A.C.P. Legal Defense and Educational Fund, Inc.
2. On June 27, I drafted the proposal for changing the 1974 New York Assembly District lines. The changes affect only Assembly Districts 56 and 57 of Kings County in New York City.
3. I used the publication *1970 Census of Population and Housing—Census Tracts, New York, New York*, published by the United States Department of Commerce, PHC(1)-145, to determine the population of the pertinent census tracts.
4. The figures listed on the Assembly proposals, which are attached hereto and made a part hereof, are taken directly from the publication referred to in paragraph 3. The Total population, White and Negro figures are taken directly from that publication. I arrived at "Other non-white" by subtracting the figures for "White" and "Negro" from "Total population." The percentages are my own calculations. The "Total Addition" figures which appear at the end of each Annexation proposal were calculated by adding the figures for the census tracts involved in that annexation. The "Net Redistribution" figures which appear at the end of the Assembly redistricting are the result of combining the "Total Addition" figures.

5. Where the census tract number (for example "525" in the Assembly District proposal) appears without qualification, the annexation will include that tract in its entirety. Where the tract number appears with qualification (for example "555 (30%)" in the Assembly District proposal), I drew the lines through a particular census tract. The percentage qualifications represent my best estimate of the portion of that tract which would be included by the annexation.

6. On the Assembly proposal, 30% of tract 555 has been used because approximately 70% of the tract was in District 58.

7. 75% of tract 549 was used because approximately 50% of tract 549 is in District 58.

8. 95% of tract 537 was used because approximately 5% of tract 537 was in District 56.

9. 15% of tract 237 was used because approximately 85% of tract 237 was already in District 56.

10. 50% of tract 551 was used because approximately 50% of tract 551 is already in District 58.

11. 35% of tract 235 was used because approximately 65% of tract 235 was already in District 56.

12. 70% of tract 233 was used because approximately 30% of tract 233 was already in District 56.

13. 516 of tract 243 was used because only 5 of the 6 blocks in tract 243 are moved to District 56.

14. The red lines drawn on the 1974 Assembly maps attached hereto and made a part hereof represent the proposed annexations. The blue lines represent the 1974 lines which would be superceded by the proposed annexations.

15. The red lines are described in street name in each annexation proposal.

16. The census tracts which would be added to each district by ignoring the blue lines and following the red lines, are noted in each annexation proposal. The population figures or percentage approximations of population are also noted.

17. The census tracts which I have used were determined by comparing the map of census tracts printed in the publication referred to in paragraph 3 with the 1974 Senate and Assembly District maps. A copy of the pertinent section of the census map is attached hereto and made a part hereof. The red lines on the census map show my best estimation of the proposed changes. The blue lines show my best estimation of the pertinent sections of the 1974 lines.

/s/ ERIC SCHNAPPER
Eric Schnapper

Subscribed to and sworn before
me this 28th day of June, 1974

/s/ PEGGY C. DAVIS
Notary Public

Peggy C. Davis
Notary Public, State of New York
No. 31-5940055
Qualified in New York County
Commission Expires March 30, 1976

Assembly Districts

Annex to 56:

All portions of the 57th Assembly District now located north of Flushing Avenue and north or east of the Brooklyn Navy Yard.

Added Census Tracts

<i>Tract 555 (30%)</i>	No.	Percentage
Total Population	225	100.0
Black	9	4.0
Other non-white	22	9.9
White	194	86.1

<i>Tract 551 (50%)</i>		
Total Population	2882	100.0
Black	199	6.9
Other non-white	121	
White	2612	

<i>Tract 549 (75%)</i>		
Total Population	1163	100.0
Black	75	6.4
Other non-white	96	8.2
White	992	85.6

<i>Tract 525</i>		
Total populations	3864	100.0
Black	344	8.9
Other non-white	62	1.6
White	3458	89.5

<i>Tract 547</i>	No.	Percentage
Total Population	4290	100.0
Black	458	10.7
Other non-white	40	0.9
White	3792	88.4
<i>Tract 545</i>		
Total Population	3510	100.0
Black	292	8.3
Other non-white	48	1.4
White	3170	90.3
<i>Tract 535</i>		
Total Population	4473	100.0
Black	135	3.0
Other non-white	51	1.1
White	4287	95.9
<i>Tract 539</i>		
Total Population	1622	100.0
Black	209	12.9
Other non-white	22	1.4
White	1391	85.7
<i>Tract 537 (95%)</i>		
Total Population	2137	100.0
Black	426	19.9
Other non-white	41	1.9
White	1670	78.2

<i>Total addition to District 56</i>	No.	Percentage
Total Population	24,166	100.0
Black	2,097	8.7
Other non-white	503	2.1
White	21,566	89.2

Annex to 57:

These are bounded by the present border between 57th and 56th districts and a line from the East River along the eastern boundary of the Navy Yard to Flushing Avenue, east on Flushing Avenue to Bedford Avenue, south on Bedford to Van Buren Street, east on Van Buren to Nostrand Avenue, south on Nostrand to Fulton Street, west on Fulton Street to Putnam.

Added Census Tracts

<i>Tract 237 (15%)</i>	No.	Percentage
Total population	376	100.0
Black	102	27.2
Other non-white	12	3.1
White	262	69.7
<i>Tract 235 (35%)</i>		
Total Population	1069	100.0
Black	239	39.4
Other non-white	220	20.6
White	610	40.0

<i>Tract 233 (70%)</i>	No.	Percentage
Total population	3870	160.0
Black	2661	68.7
Other non-white	67	1.7
White	1142	29.6

Tract 229

Total population	4710	100.0
Black	4298	91.3
Other non-white	44	0.9
White	368	7.8

Tract 227

Total population	4684	100.0
Black	4553	97.2
Other non-white	30	2.2

Tract 243 (516—83.33%)

Total population	3910	100.0
Black	3668	93.1
Other non-white	103	2.6
White	169	4.3

Tract 245

Total population	5530	100.0
Black	5195	93.9
Other non-white	41	.7
White	294	5.4

<i>Total addition to District 57</i>	No.	Percentage
Total population	24,179	100.0
Black	20,716	85.7
Other non-white	517	2.1
White	2,946	12.8

Net Change to 57th District

Total Population	+13
Black	+18,619
Other non-white	+14
White	-18,620

Ethnic Composition of Assembly Districts

	<u>1972 Lines</u>	<u>1974 Lines</u>	<u>Plaintiffs' Plan</u>	<u>Intervenors' Plan</u>
<i>56th District</i>				
White	7.1%	11.9%	7.5%	27.3%
Non-white	92.9%	88.1%	92.5%	72.7%
<i>57th District</i>				
White	38.7%	35.0%	39.4%	19.6%
Non-white	41.3%	65.0%	60.6%	80.4%



BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74 C 877

[Caption omitted]

**Statement of Material Issues as to Which There Is
a Genuine Dispute**

Applicants for Intervention maintain, as does the United States, that plaintiffs have failed to state a claim for which relief can be granted, even assuming to be true all the facts alleged in the Complaint. Applicants further maintain that, regarding the facts which plaintiffs claim give rise to this action, there is a genuine dispute as to the following questions.

1. Whether the Hassidic community of Williamsburgh is "a unitary ethnic group" or has been recognized by the legislature as "a unitary community" in any legally relevant sense. Applicants for intervention maintain this is not the case. See Plaintiffs' Motion for Summary Judgment, ¶¶ 4-5.

2. Whether approximately 155,000 Hassidic residents live in the 56th Assembly District and 23rd Senate District. Plaintiffs' Motion for Summary Judgment, ¶ 6. Plaintiffs' own statistics indicate there are no more than 5,000 Hassidim in the 56th Assembly District and no more than 12,000 in the 23rd Senate District. See affidavit of James Rocap, III.

3. Whether the effect of dividing the Hassidic community would be to reduce its voting strength or abridge the right to vote of individual members of the community. Plaintiffs' Motion for Summary Judgment, ¶ 7.

4. Whether the "sole reason" for dividing the Hassidic community was to achieve a non-white population of at

least 65% in certain districts. Plaintiffs' Motion for Summary Judgment, ¶ 8. Mr. Scolaro testified that 65% standard could have been met without dividing the community. Transcript, pp. 172-175.

5. Whether the decision of the Attorney General of the United States was based in part on evidence of purpose or deliberate racial gerrymandering to dilute or minimize the votes of minority races in Kings County. Plaintiffs' Motion for Summary Judgment, ¶ 9. There was substantial such evidence in the record on which the Attorney General relied. See letters of Congresswoman Shirley Chisholm, Congressman Herman Badillo, Councilman Samuel Wright, Memorandum In Opposition to Approval of Chapters 11, 76, 77 and 78, New York Laws of 1972.

6. Whether the Attorney General's decision was based exclusively on "high minority concentration" or the possibility of maximizing" non-white voting strength. Plaintiffs' Motion for Summary Judgment, ¶ 9. That decision was based on a finding that the 1972 had the effect of denying or abridging the right to vote on account of race or color, in violation of Section 5 of the Voting Rights Act. Letter of J. Stanley Pottinger, April 1, 1974.

7. Whether under the 1972 reapportionment the 57th Assembly district was 61.5% non-white. Plaintiffs' Motion for Summary Judgment, ¶ 10. The *total* population of the district was between 50.3 and 61.2% non-white, the exact figure being impossible to determine. See Table 3. The population of *voting age* was no more than 40% non-white. See Table 1. See also Table 2.

8. Whether there will be any adverse effect of the 1974 lines on voter registration and voting efforts in the Hassidic community. Plaintiffs' Motion for Summary, ¶ 11. In six months to the enactment of the 1974 lines only 68 persons registered to vote in the entire Hassidic community, an area of over 30,000. Of these 68 a majority

were persons who had recently moved into the area or turned 18. Affidavit of Marian B. Scheuer.

9. Whether there is any unusual alienation or unwillingness to participate in the electoral process in the Hassidic community, or whether such would result from the 1974 district lines. Plaintiffs' Motion for Summary Judgment ¶ 11. The turnout rate in the Hassidic community in the last two general elections was substantially greater than that of New York City as a whole. Affidavit of Marian B. Scheuer. Alienation and unwillingness to participate in the electoral process are common and growing phenomenon, and are substantially greater among non-whites than among whites. See Louis Harris, "Alienation Index Rising."

Respectfully submitted,

/s/ JACK GREENBERG
Jack Greenberg
Eric Schnapper
Suite 2030
10 Columbus Circle
New York, New York 10019
212-586-8397

*Counsel for Applicants for
Intervention*

DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20520

July 2, 1974

Honorable Walter Bruchhausen
United States District Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United Jewish Organization of Williamsburgh,
Inc. v. Wilson, No. 74C-877*

Dear Judge Bruchhausen:

This is in reference to the letter of plaintiffs' counsel dated June 28, 1974, accompanying his response to the motion to dismiss filed by the Attorney General of the United States noticed for argument for July 5, 1974, in which he requested that a decision be made on the motion without oral argument and before July 5.

In view of the large volume of materials already submitted to the Court including our motion to dismiss, plaintiff's response to our motion, and the NAACP's memorandum in support of motions to dismiss we agree that oral argument will not be necessary and that all papers be considered as submitted.

We are enclosing for the information of the Court a copy of our response of July 1, 1974 to the submission by the State of New York, under Section 5, of the reapportionments of certain Congressional, Assembly and Senate Districts in Kings and New York Counties, New York.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

July 1, 1974

Mr. Goerge D. Zuckerman
Assistant Attorney General
In Charge of Civil Rights Bureau
State of New York
Two World Trade Center
New York, New York 10047

Dear Mr. Zuckerman:

This is in reference to your submission to the Attorney General under Section 5 of the Voting Rights Act on behalf of Kings and New York Counties of Chapters 588, 589, 590 and 591 of the Laws of 1974 which revise some of the assembly, senatorial and congressional districts. This submission was made on May 31, 1974 and, in accordance with your request, expedited consideration has been given to this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22).

The Attorney General does not interpose any objection to the implementation of these acts. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin enforcement of such provisions.

Because the large volume of public comments we have received concerning this submission precludes an individual response to each person who has expressed a view concerning this legislation, we are making public our staff analysis of the major issues raised, a copy of which is enclosed for your information.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

UNITED STATES DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Nos. V6541 Thru 47

IN THE MATTER OF Chapters 588, 589, 590 and 591 of the Laws of 1974 Amending New York State Law in Relation to Certain Congressional, Assembly and Senate Districts in Kings and New York Counties, New York.

MEMORANDUM OF DECISION

July 1, 1974

Background

The instant submission was received on May 31, 1974 accompanied by a request for expedited consideration in anticipation of the beginning of the state's pre-election calendar on June 17, 1974. On the date of receipt, notice of submission and notice of the request for expedited consideration were mailed to persons listed in the Registry of Interested Persons as required in Civil Rights Division procedural guidelines.

This submission addresses the objection filed on behalf of the Attorney General on April 1, 1972. In that determination the Attorney General was unable to conclude that specified portions of the redistricting plan in the covered jurisdictions of Kings and New York County did not have a discriminatory effect on the voting rights of Black and Puerto Rican residents. At the request of members of the staff of the Joint Legislative Committee on Reapportionment attorneys of this office met with them to discuss the Attorney General's objection to the end that the state legislature could have a better understanding of methods of eliminating the dilutive effect of the prior plan. The Joint Committee staff was advised that in any such matter as

districting there were a number of alternatives, that it was the State's responsibility to design the districts, and that this Department had no interest in any particular plan.

The present revisions were adopted at a special legislative session on May 29, 1974. For the most part the legislature accepted the Joint Committee's recommendations.

Public comments on the revised district lines have been intense and voluminous. With respect to one senatorial district alone we have received petitions signed by 7,000 citizens. We have also received comments from representatives of racial and ethnic minority groups, neighborhood organizations, political candidates, members of the legislature, church groups and service clubs. The revisions have also been the subject of a number of news stories and editorial comments in news media serving the affected areas. Our staff has read and evaluated each such comment.

The comments fall into several general classifications. An examination of each indicates that there is no reasonable basis for entering a further objection under the Voting Rights Act and we recommend that no objection by the Attorney General be interposed to implementation of this plan. In this connection, it is important to note that we do not have standing to evaluate, and express no opinion as to, legal issues not within the scope of the Voting Rights Act. Complaints about the state's reapportionment plan which do not relate to an alleged purpose or effect of discrimination on the basis of race or color are not cognizable in the Justice Department's review, regardless of the merit or lack of merit such complaints may have.

Because there has been an unprecedented public interest in and comment on this submission, the following analysis sets forth our views on each of the major issues presented. Because the large number of persons commenting preclude a personal reply to each, we further recommend that this

memoranda be released to the public and the press so that the basis for our action can be known generally.

Analysis of Issues

1. *Scope of Attorney General's Authority to Review Matters Submitted Under Section 5, Voting Rights Act.*

Section 5 of the Voting Rights Act provides that:

Whenever a State or political subdivision [covered by the Act] shall act or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1974, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, . . .

That a legislative reapportionment such as the one involved here constitutes a change within the purview of Section 5 was made clear by the Supreme Court in *Georgia v. United States*, 411 U.S. 526 (1973).

Guidelines promulgated by the Attorney General for the processing of submissions made to him under Section 5 (28 C.F.R. 51, *et seq.*) provide, at Section 51.19, that:

Section 5, in providing for submission to the Attorney General as an alternative seeking a declaratory judgment from the U.S. District Court for the District of Columbia, imposes on the Attorney General what is essentially a judicial function. Therefore, the burden of proof on the submitting authority is the same in submitting changes to the Attorney General as it would be in submitting changes to the District Court for the District of Columbia. The Attorney General shall base his decision on a review of material presented by the individuals or groups, and the results of any investigation conducted by the Department of Justice. If the Attorney General is satisfied that the submitted change does not have a racially discriminatory purpose or effect, he will not object to the change and will so notify the submitting authority. If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the District Court, enter an objection and so notify the submitting authority.

Thus, pursuant to the guidelines, the Attorney General must use the same test in reaching his determination as would the District Court for the District of Columbia, *i.e.*, whether the submitted change has the purpose or effect of denying or abridging the right to vote *on account of race or color*. These guidelines have been upheld by the Supreme Court as a reasonable interpretation by the Attorney General of his responsibilities under the Act. *Georgia v. United States*, 411 U.S. at 536-41.

With this view of the Attorney General's Section 5 responsibility in mind, we turn to an examination of the issues raised by this submission.

2. Failure to Hold Public Hearings

Many of the communications received by the Department of Justice complain of the absence of public hearings by the state in connection with its enactment of the revised plans under submission. A number of these communications suggest that the state's proceedings were carried on in secrecy in order to pursue an unfair political advantage.

From all that we can perceive, however, the matter of redistricting in the affected districts has received wide publicity in the New York news media since the time the Attorney General's objection was interposed on April 1, 1974. For example, on April 7, 1974, a four-column editorial captioned *Albany Prepares for Redistricting to End Racial Inequities Here* appeared in the *New York Times* newspaper. Among other statements in the editorial was one in the second paragraph declaring that "The redistricting, pending further litigation, is tentatively being set for special legislative session late next month." In other news articles appearing as early as April 2, 1974, the nature of the Attorney General's objection was discussed, including speculation that new districts would have to be devised by the legislature and approved by the Department of Justice by June 17, 1974, the date for commencing the circulation of qualifying petitions. (See, e.g., *New York Times*, April 2, and April 9, 1974). Thus, it seems clear that the impending revision of the district lines objected to by the Attorney General was widely publicized.

The absence of formal public hearings is conceded by the state and in some circumstances could properly be considered in our review. In justification for its failure to provide such hearings the state offered the following:

Due to the extremely short period available to the Committee for completing its work and the countless hours required in effecting compliance with the New York State Constitutional block on the border rule, the

Committee was unable to hold Public Hearings. However, participation by any legislator, individual, public or special interest group was most welcome. The Committee has received either directly or through the [state] Attorney General's office numerous suggested districting plans. While many of these were merely suggestions respecting specific Assembly, Senate or Congressional Districts, the Committee staff plotted every suggestion received. This information was of substantial assistance to the Committee, particularly with respect to policy determination.

(Interim Report of The Joint Committee on Reapportionment, May 27, 1974, pp. 11-12.) The report went on to describe and discuss various suggestions and alternatives which were received from minority groups or individuals and considered by the Committee in arriving at the plans adopted. (*Id.* at pp. 12-13.)

Moreover, the staff of the Joint Committee developed almost all of the plan under submission. During our contacts with them, that staff viewed as its sole assignment the correction of the conditions addressed in the Attorney General's objection and in the view of the Justice Department Staff expressed only professional considerations.

It appears, therefore, that even though no formal public hearings were held by the state, there was substantial public awareness of the issues being considered and that, in fact, there was significant contribution by interested parties. While full public hearings in a matter of this nature would in our opinion ordinarily be preferable, under the circumstances involved here we are unable to conclude that the state had no rational justification for dispensing with those hearings. In any event, we find nothing in the notice procedures used by the state which would warrant an objection by the Attorney General absent some other more substantive infirmity.

3. *Applicability of the Voting Rights Act Provisions Involved*

The Voting Rights Act of 1965 was enacted primarily to enforce the Fifteenth Amendment to the Constitution of the United States and, thus, primarily to assure and protect the voting rights of black Americans. (Hearings on Voting Rights Bill H.R. 6400 before the House Committee on the Judiciary, 89th Cong., 1st Sess., at 9 (1965).) The special applicability of Section 5 preclearance requirements was specifically linked to the coverage formula of Section 4 of the Act so as to prevent the continued utilization by states and their subdivisions, primarily in the South, of mechanisms which made it more difficult for such black citizens to register, vote, and thus participate fully in the political process. Because of the unique formula, specifically conceived by the Congress, the applicability of Section 5 designedly fell more heavily on the southern States because of their history of denying and suppressing the black vote.

However, the burdens of Section 5 also fell upon other jurisdictions. Because of a combination of factors, the counties of Bronx, Kings and New York in the State of New York (all located within the City of New York) became subject to the constraints of the Act,¹ and require preclearance of voting changes before implementation. Because New York City includes a myriad of racial and ethnic groups, an analysis of the racially discriminatory purpose or effect of a voting change involves considerations quite different from those involved in the southern basically black-white context. For this reason, a discussion of the various groups covered by the Voting Rights Act is appropriate. The groups in whose behalf complaints have been brought

¹ According to 1970 Census figures, there are more blacks in the Counties of Bronx, Kings and New York than in any single southern state covered by the Voting Rights Act.

to our attention include Blacks, Puerto Ricans, Hasidic Jews, Irish, Polish and Italians.

The Voting Rights Act was enacted to "enforce the Fifteenth Amendment . . . and for other purposes." The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race, color or previous condition of servitude. Both the intent and purpose of the Fifteenth Amendment and the Voting Rights Act appears to have been primarily to eliminate discrimination against Negroes, a group which had been long subjected to discrimination in the voting process because of race.

While the legislative history and judicial interpretations of the Fifteenth Amendment do not identify what groups, if any, other than blacks may be protected by the Amendment, we conclude that Puerto Ricans in New York may be considered within the protections of the Fifteenth Amendment and the Voting Rights Act by virtue of both judicial precedent and Congressional determinations.

In drawing this conclusion we start with the Supreme Court's decision in *Oregon v. Mitchell*, 400 U.S. 112 (1970). The Court's decision in that case dealt with several aspects of the 1970 Voting Rights Act Amendments.² The one of concern here involves the Court's holding constitutional the nationwide suspension of literacy tests.

Although the Court rendered a judgment in which five different opinions were written, eight justices found the ban on literacy tests could be sustained on the basis of the Fifteenth Amendment which prohibits denying or abridging the right to vote on account of race, color or previous condition of servitude. Mr. Justice Black, in his opinion, explicitly said that "the literacy test ban . . . is constitu-

² Some aspects not relevant here included lowering the voting age to 18 for both federal and state elections, and requiring all states to provide absentee registration and balloting opportunities for presidential elections.

tional under . . . the Fifteenth Amendment." 400 U.S. at 132. He then referred at length to the evidence before the Congress showing low voter registration in areas with large Spanish-American populations and showing that similar difficulties confronted Puerto Ricans in New York. 400 U.S. at 132-33. Mr. Justice Brennan, with Justices White and Marshall concurring, found that the literacy tests could be banned under the Fifteenth Amendment, 400 U.S. at 235-236, in large measure because the negative impact of such tests fell "most heavily on blacks and persons of Spanish surname." See, *e.g.*, 400 U.S. at 235.³

These opinions suggest that the Supreme Court found that the Congress had constitutional power under the Fifteenth Amendment to prohibit certain kinds of voting discrimination against at least some Spanish-surnamed Americans, and that the Congress had exercised this power in enacting the 1970 Amendments.

It should also be noted that lower court decisions have also indicated that some Spanish-surnamed Americans are covered by federal statutes which protect the rights of non-white citizens.⁴

Some support for the view that Puerto Ricans are protected generally by all of the provisions of the Voting Rights Act may be seen in the portion of that legislation which explicitly protects that group (Section 4e, 42 U.S.C. 1973b(e)(2)). Although Section 4(e) is predicated on the Fourteenth Amendment, whose design was primarily to address racial discrimination, the Congressional concern with Puerto Ricans may be read to indicate an intention to pro-

³ See also the opinions of Mr. Justice Harlan (400 U.S. at 216) and Mr. Justice Stewart (400 U.S. at 282), the Chief Justice and Mr. Justice Blackmun, concurring.

⁴ See, *e.g.*, *Hernandez v. Erlenbusch*, 368 F. Supp. 752 (D. Ore. 1973) and *Puerto Rican Organization for Political Action, et al. v. Kusper, et al.*, 490 F.2d 575 (7th Cir. 1973).

vide that group with the protection of all the provisions of the Voting Rights Act.

In contrast to the foregoing conclusion regarding Puerto Ricans, there was nothing revealed by our review of the circumstances surrounding the adoption of the Fifteenth Amendment, the passage of the Voting Rights Act and its Amendments, the language of those provisions, their legislative history, or the formula used for bringing states and political subdivisions under the Act which indicates that Hasidic Jews or persons of Irish, Polish or Italian descent are within the scope of the special protections defined by the Congress in the Voting Rights Act. Nor has material supporting that view been brought to our attention by others. We are forced to conclude, therefore, that given what we now know of relevant precedent, these groups are not among those whose rights the Attorney General is commanded and empowered to protect in his consideration of a submission under Section 5 of the Voting Rights Act. We make no comment, of course, on the relative merits of this congressionally defined scope of coverage and nothing we say here should be interpreted as affecting any other rights accruing to these parties from other sources.

We turn now to the substantive issues involved.

4. *Kings County Congressional Plan—Complaints of Blacks and Puerto Ricans.*

Our analysis of the Congressional districting reveals a basic situation of collectively mutual but individually conflicting interests of blacks and Puerto Ricans. We reach this conclusion because even though these groups as separate entities prefer to have controlling positions in any specific election contest, our review shows that in those instances where black or Puerto Rican candidates have "white" opposition, the two groups tend to unite behind the "minority" candidate. In our experience, this phenom-

enon provides a realistic and practical basis for assessing the effect of the redistricting within the meaning of Section 5.

Under the plan of districting submitted to the Attorney General on January 31, 1974, and to which an objection was interposed on April 1, 1974, Congressional districting showed the following in Kings County:

<i>District #</i>	<i>Black</i>	<i>Puerto Rican</i>
11 (part)	18.9%	8.8%
12	75.9%	13.5%
13	1.9%	1.8%
14	22.0%	24.0%
15	55.4%	8.4%
16	20.9%	3.5%

In evaluating this districting scheme the Attorney General concluded that:

(W)ith respect to the Kings County congressional redistricting, the lines defining district 12 and surrounding districts appear to have the effect of overly concentrating black neighborhoods into district 12, while simultaneously fragmenting adjoining black and Puerto Rican concentrations into the surrounding majority white districts.

Our previous analysis showed that whites constituted 64.9% of the population of Kings County, blacks constituted 24.7% and Puerto Ricans constituted 10.4% of the population. Because of the combined concentration of blacks and Puerto Ricans in the affected area, the Attorney General concluded that he could not certify that the voting strength of those affected groups had not been diluted and therefore, that he had to object to the implementation of that plan under the Voting Rights Act.

As noted above, the plan objected to by the Attorney General on April 1 provided for a district 12 which had a 75.9% black and 13.5% Puerto Rican population, or a combined "minority" population of 89.4%, and a district 14 which was 22% black and 24% Puerto Rican or 46% "minority." The revised plan, presently under submission, shows the following breakdown for those districts.

	<i>Black</i>	<i>Puerto Rican</i>	<i>Combined</i>
District 12	53%	19.2%	72.2%
District 14	45.1%	18.2%	63.3%

Some members of both the black and Puerto Rican communities have registered dissatisfaction with the lines as presently drawn.

According to Puerto Rican spokesmen, the Congressional districting is unsatisfactory because even though the new plan results in two districts with combined "minority" populations of 72% and 63%, the overall effect of the plan is to reduce the Puerto Rican strength from 24% in a single district (old district 14) to 19% (new district 12). They maintain that the plan has the effect of splintering off substantial numbers of Puerto Ricans into districts 11 and 16 and that a district could be created in which Puerto Ricans are a majority.

In order to test and evaluate these contentions we attempted to draw a theoretical plan which would create a majority Puerto Rican district. In addition, we carefully analyzed a plan suggested to us by Puerto Rican spokesmen. In our attempt to maximize Puerto Rican strength, our staff was able to construct a district with no more than 30.2% Puerto Rican population. Our analysis of the district proposed by the Puerto Rican spokesmen revealed a Puerto Rican population there of only 24.6%.

The construction of our alternative resulted in a reduction of the black percentage in what would be district 14 to 28% thus effecting a district which would have a minority population of 58%. The proposal espoused by the Puerto Rican spokesmen would have a 42.8% black population for a minority population of 67%. The former, under all views we have obtained, would not be a viable majority in New York City and the latter, though resulting from an effort to maximize Puerto Rican strength, does not reach the Puerto Ricans' desired goal of acquiring the predominant minority position in a district.

In addition, these theoretical plans result in districts which are not compact and contiguous. It is well to iterate at this point that according to 1970 Census figures Puerto Ricans constitute only 10% of the population of Kings County; that they reside in areas forming a corridor beginning in the Williamsburgh area, running along the northern fringe of the black Bedford-Stuyvesant area and into East New York; and, that the county must be divided into five districts and part of a sixth.

While the effort to maximize Puerto Rican voting strength did result in possible plans which would include a higher percentage of the Puerto Rican population in a single district than does the plan under submission, it is crucial to note that nothing in the law imposes any such duty on the state. Rather, the standard to be used is whether or not the plan as submitted minimizes or cancels out the voting strength of the minority. See, *e.g.*, *White v. Regester*, 412 U.S. 755 (1973); *Whitcomb v. Chavis*, 403 U.S. 124 (1971). When the minority population percentage in the submitted plan is viewed against the percentages obtained in the maximized plans, we can hardly conclude that the plan under submission has that effect.

The basic complaint of some of the black representatives is that the new plan reduces the effectiveness of the black voting strength in the Kings congressional. They say that

whereas under the old plan there was one "safe" district (district 12), where the 89.4% minority population could assure the election of a minority candidate, neither of the new districts, in which minorities predominate by 72% and 63% majorities, is high enough in minority population to be "safe." To support this contention they argue that the 72% and 63% figures may be accurate but still are not practical since registration among blacks and Puerto Ricans is significantly lower than among whites. As with the Puerto Ricans, the black complainants maintain that substantial concentrations of blacks and Puerto Ricans in the Oceanhill-Brownsville and Crown Heights area of Brooklyn could be included in what is district 14 of the plan under submission, thus lifting the minority percentage above 72% and 63% in both districts by virtue of the shifting of lines necessitated by such a move.

In assessing these arguments, two basic principles should be kept in mind. First, it is not the function or authority of the Attorney General under Section 5 to devise redistricting plans, or for that matter to dictate to the State of New York specific actions, steps or lines with respect to its own redistricting plan. The only function of the Attorney General under Section 5 is to evaluate a voting change, such as that encompassed in the instant submission, once it has been adopted by the state and submitted for the Attorney General's review, and to determine the limited question of whether the purpose or effect of the change in question is to deny or abridge the right to vote on account of race or color. If no such abridgment or denial exists, the Attorney General must not object to the plan, regardless of the merits or demerits of the plan in other regards, including state, local, and partisan political ones. If an abridgment or denial does exist—as we found in the first submission by New York—the Attorney General must object, stating his reasons, but not drawing a counter plan or commanding any particular state response.

Second, the Voting Rights Act does not guarantee that any particular candidate be elected, nor does it require that any persons actually exercise the voting rights protected by the Act. What it does do is assure that the *opportunity* of the affected minorities to participate freely in the electoral process, and thus elect a candidate of their choice, should not be unlawfully abridged.

In light of these principles, it becomes apparent that none of the contentions raised by these groups provide a basis for the Attorney General to object to the congressional redistricting under review. In addition to the fact that the law does not require the state to "maximize" minority voting strength through gerrymandering or other artificial devices, the facts in this case—particularly the geographical dispersion of Puerto Rican neighborhoods throughout Kings County—show that it is virtually impossible to draw a majority Puerto Rican congressional district. They show further that even a 30% Puerto Rican district is attainable only by considerable gerrymandering. In this regard, and with respect to complaints of both groups, we repeat the test defined by the courts is not whether districts still more favorable to minorities can be drawn but, rather, whether the districts as drawn have the effect of minimizing minority voting strength.

As far as the blacks' argument on the meaning of the 72% and 63% majorities is concerned, in our view these population majorities, even allowing *arguendo* for a lower voting age population among blacks and Puerto Ricans, provide a realistic opportunity for minorities to elect a candidate of their choice. Whether or not those minorities choose to exercise their right by registering and voting is obviously a matter of great concern, but as a matter of law, it is not one upon which the Attorney General can base an objection, at least not in the context of this submission.

5. *Hasidic Jews and Other Ethnic Groups.*

Perhaps the largest single group of complaints have come from the Hasidic Jewish community in the Williamsburgh area and from the Irish, Italian and Polish communities in North Brooklyn. These groups complain that the senatorial and assemblymanic districts, but primarily the senatorial districts, dilute their voting strength by splitting their communities into districts which join them with blacks and Puerto Ricans from the adjacent Bedford-Stuyvesant area. Particular concern has been expressed over the division of the old senatorial districts represented by State Senators Chester Straub and Carol Bellamy. Petitions with over 7,000 signatures objecting to the senatorial redistricting in that area have been received.

While it is unquestionable that the redistricting done by the state in an effort to meet the prior objection of the Attorney General has affected the Hasidic Jewish community in Williamsburgh and the ethnic communities in North Brooklyn, the issues raised are not ones which the Attorney General has authority to determine under the provisions of Section 5 of the Voting Rights Act (See Section 3, above). The pendency of litigation in Eastern District of New York involving these districts regrettably precludes more extended discussion here.

6. *New York County Senatorial Plan.*

Another portion of the redistricting as to which major opposition has been received is the New York County senatorial plan. A history of this plan is appropriate to our review of this matter.

The Attorney General's objection to this aspect of the previous redistricting plan stated that:

(T)he lines defining district 28 in West Harlem appear to reduce significantly the minority voting strength in

that area. Significant portions of minority neighborhoods in that area (district 27 under the old plan) have been removed to proposed district 29 with apparent dilutive effect.

Under the plan then being evaluated, blacks and Puerto Ricans constituted 55.6% of district 28 and 47.3% of district 19.

In its efforts to meet the Attorney General's objection, The Joint Committee on Reapportionment devised a plan which resulted in a district 28 with a minority population of 82.8% and a district 29 with 27.5% minority population. However, one faction in the minority community prevailed upon the Committee to adopt instead an alternative in which district 28 had 64.1% minority population and district 29 had 44.1% minority. The latter plan is the one adopted by the state and presently under submission.

Perhaps the most documented opposition to this portion of the plan has come from the incumbent in the 71st Assembly District, Assemblyman Franz Leichter. Mr. Leichter's position is that the difference between the minority percentage in the plan objected to and the one under submission does not demonstrate that the districts have been so significantly changed as to meet the Attorney General's objection. In support of his position he points to inconsistencies in statistics provided by the state and argues that the difference between the two plans is even smaller than that reflected in the objectionable 55.6 and resubmitted 64.1 minority percentages furnished us by the state.

In addition to Assemblyman Leichter's complaint, some blacks have registered their dissatisfaction with district 28 and maintain, with some factual substantiation, that district 28 as submitted was designed solely to preserve the seat of the black incumbent.

We have evaluated in depth the contention of Assemblyman Leichter and find that while he is substantially correct in his claim of a statistical discrepancy, the error does not materially affect the lawfulness of the submission. The error related to calculations made in connection with the plan to which the Attorney General previously objected, so that whereas the state advised us that that plan had a minority percentage of 55.6%, the actual percentage was approximately 58.5% minority.

Because of that discrepancy, there is some merit to Assemblyman Leichter's argument that the difference is not as substantial as it appears and, given other circumstances, we might conclude, as he does, that the difference is insufficient to remove the previous objection. The fact is that even though the objection was based on our belief that district 28 was 55.6% minority, it is likely that the same result would have obtained had the more accurate percentage of 58.5% been known. However, under our analysis the 64.1% minority population in the instant plan is acceptable regardless of what the earlier figure actually was. Besides, as we note above, the Voting Rights Act assures affected minorities the opportunity for free participation in the political process. Where, as here, it is clear not only that minorities have participated in the political process, but that the plan was drawn as it is because of the insistence of a substantial faction of the minority community, we do not believe that the purpose of the Act would be served by an Attorney General objection. Again the question we must answer is not whether a plan might be conceived with a majority of blacks and Puerto Ricans even more decisive than the 64.1% majority now submitted by the state. Rather, the issue here is whether the adopted plan dilutes minority voting rights.

Nor do we find authority in the Act for the proposition that the Attorney General may, under the circumstances here, interpose an objection to a change on the ground that

it is not satisfactory to all segments of the minority community.

For the foregoing reasons, we conclude that there is no basis for an Attorney General objection and recommend that an appropriate notification be mailed promptly to the submitting authority.

Respectfully submitted,

/s/ JAMES P. TURNER
James P. Turner
Deputy Assistant Attorney General

/s/ GERALD W. JONES
Gerald W. Jones, Chief
Voting and Public Accommodations
Section

Approved:

/s/ J. STANLEY POTTINGER
J. Stanley Pottinger
Assistant Attorney General

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

[Caption omitted]

Civil Action No. 74C-877

Answer

The defendants, MALCOLM WILSON, JOHN GHEZZI, WARREN ANDERSON, and PERRY DURYEA, JR. answer the complaint as follows:

First Defense

The complaint fails to state a claim against the above named defendants upon which relief can be granted.

Second Defense

1. Defendants deny the allegations of paragraph "1" of the complaint except as it describes the nature of the cause of action upon which the complaint is founded.

2. Defendants deny the allegations of paragraph "2" of the complaint.

3. Defendants admit the allegations of paragraph "3" of the complaint.

4. Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the first two sentences of paragraph "4" of the complaint, deny the third sentence and admit the fourth sentence of that paragraph.

5. Defendants admit the allegations of paragraph "5" of the complaint.

6. Defendants admit the allegations of paragraph "6" of the complaint.

7. Defendants admit the allegations of the first two sentences of paragraph "7" of the complaint and assert that they are without knowledge or information sufficient to form a belief as to the truth of the allegations in the third and fourth sentences of paragraph "7."

8. Defendants deny the allegations in the first sentence and admit the allegations in the second sentence of paragraph "8" of the complaint.

9. Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "9" of the complaint.

10. Defendants admit the allegations in paragraphs "10" and "11" of the complaint, but deny that the district lines established by the Judicial Commission in March, 1966 or by the New York Legislature in 1971 necessarily reflect recognition by the Judicial Commission or the New York Legislature of the unity of the area described in paragraph "5" of the complaint.

11. Defendants admit the allegations in paragraphs "12, 13, 14, 15 and 16" of the complaint.

12. Defendants admit the allegations in the first sentence of paragraph "17" of the complaint, but deny the allegations in the second sentence of that paragraph.

13. Defendants admit the allegations of paragraph "18" of the complaint.

14. Defendants admit the allegations of paragraph "19" of the complaint.

15. Defendants deny the allegations of paragraph "20" of the complaint but admit that the Joint Committee did consider the racial composition of the proposed districts to the extent necessary to effect compliance with the Federal Voting Rights Act of 1965, as amended, and to overcome the objections to the 1972 district lines that were

expressed by the United States Department of Justice in its determination of April 1, 1974.

16. Defendants admit the allegations of paragraphs "21" and "22" of the complaint.

17. Defendants deny the allegations in paragraph "23" of the complaint.

18. Defendants deny the allegations of paragraph "24" of the complaint except insofar as it describes the boundaries of certain Assembly and Senate Districts.

19. Defendants deny the first sentence in paragraph "25" of the complaint, and allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of that paragraph.

20. Defendants deny the allegations of paragraphs "26," "27," and "28" of the complaint.

21. Defendants deny the first sentence in paragraph "29" of the complaint, and allege that on July 1, 1974, the Attorney General of the United States issued a determination pursuant to Section 5 of the Voting Rights Act that he had no objection to Chapters 588, 589, 590 and 591 of the New York Laws of 1974. A copy of that determination is annexed hereto as Exhibit "A."

22. Defendants admit the allegations of paragraph "30" of the complaint.

23. Defendants deny the allegations of paragraph "31" of the complaint.

WHEREFORE, defendants demand judgment that the complaint herein be dismissed.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for defendants Malcolm
Wilson, John Ghezzi, Warren An-
derson, and Perry Duryea, Jr.
By

/s/ GEORGE D. ZUCKERMAN
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Two World Trade Center
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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74C-877

[Caption omitted]

Notice of Appeal

Notice is hereby given that the United Jewish Organiza-
tions of Williamsburgh, Inc., *et al.*, plaintiffs above named,
hereby appeal to the United States Court of Appeals for
the Second Circuit from the order denying plaintiffs tem-
porary relief, entered in this action on the 20th day of June
1974, and the *de facto* denial of plaintiffs' Motion for a
Preliminary Injunction, which motion was filed on June 20,
1974.

/s/ NATHAN LEWIN
Nathan Lewin

DENNIS RAPPS

Attorneys for Plaintiffs

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-C-877

[Caption omitted]

**Motion for Injunction Pending Appeal and for
Expedited Briefing and Argument**

SUMMARY OF EVENTS

This action challenges the constitutionality of a legislative reapportionment plan enacted by the New York Legislature on May 27, 1974. In its present posture, it relates to only two State Senate and State Assembly districts which were, in the view of the plaintiffs, drawn according to unconstitutional racial standards demanded of the New York Legislature by the Attorney General of the United States. The effect of the reapportionment was to divide and dilute the plaintiffs' voting power by splitting their community—which had always been in a single Senate and Assembly district between two such districts.

There was no advance warning whatsoever to the plaintiffs that they would be harmed as they were by the action of the New York Legislature, and within two weeks of the enactment of the challenged law, this proceeding was instituted. In order to provide full notice and opportunity to be heard to all interested parties, the plaintiffs set their Motion for a Temporary Restraining Order for June 17, 1974—six days after the complaint was filed. That date—June 17—was the first date for designating petitions for candidates in the primary election to be held on September 10, 1974. The temporary relief requested of the District Court was an order freezing the *status quo* and prohibiting the implementation of the new district lines. Various parties appeared as *amici* and potential intervenors on

June 17, 1974, and each stated its position. At the conclusion of the morning's hearing (during which, by oversight, no reported was present), the District Judge (Bruchhausen, J.) said he would enter a temporary restraining order and requested counsel for the parties to settle on its terms.

Discussion was had during the following period of one to one-and-a-half hours among counsel, with no agreement being reached. Counsel so advised the Court, and the open hearing was resumed. Judge Bruchhausen indicated at that time that he would sign an order along the lines proposed by plaintiffs' counsel, which would have advanced by four days—*i.e.*, until the hearing on a motion for preliminary injunction—the first date for legal signatures on designating petitions. (Tr. of June 17, 1974, pp. 6-7; a copy of the Transcript of that session is attached to this Motion.) After plaintiffs' counsel stated the substance of such a suggestion, Judge Bruchhausen said, "We have been unduly lengthy on this whole matter and I would agree on that" (Tr. 7). Corporation Counsel then argued that such an order was undesirable and unnecessary because no harm would be caused if the lines were declared invalid on June 21 (Tr. 8). Thereafter, counsel for the Kings County Republican County Committee, who had first noted his appearance *after* the recess (Tr. 3), advised the Court that "a couple of hundred Republicans" were out ringing doorbells to obtain signatures on petitions and that the Republican Party had distributed county election kits to "hundreds upon hundreds of workers throughout this county," so that, in his view, an order maintaining the status quo would "disenfranchise the voters from nominating their candidates" (Tr. 10). In the midst of this presentation, the following colloquy (Tr. 10):

THE COURT: You are against the TRO?

MR. BONINA: Yes, Your Honor.

When Mr. Bonina finished, Judge Bruchhausen made the following announcement (Tr. 11):

THE COURT: Very well.

Once, once in awhile, I reverse myself. I think I have heard enough pro and con.

I will not enter the TRO.

June 17, 1974—six days after the complaint was filed Refusing to hear any further argument, the judge then left the bench (Tr. 12).

Rather than seeking review in this Court of that preliminary ruling, plaintiffs proceeded four days thereafter—on June 20, 1974—to present a full day of testimony and argument to support their request for a preliminary injunction against enforcement of the district lines which split their community. The urgency of a prompt ruling was emphasized at the conclusion of the hearing, when Judge Bruchhausen requested the submission of legal memoranda (Tr. of June 20, 1974, pp. 179-181). The following colloquy is representative (Tr. 180-181):

MR. LEWIN: Because of the urgency of the matter we would like to be able to file everything really by I suppose Tuesday morning.

THE COURT: I won't hurry you, I will just put down whatever time you say you feel you would want.

MR. LEWIN: We would want to hurry things along, we think it is important that it be decided as early as possible.

THE COURT: I will leave it to you to submit your memorandum, I will say that.

MR. LEWIN: If we can schedule it—

MR. ZUCKERMAN: If we can be served, well whenever we are served I hope to have an answering memorandum within three days after being served.

THE COURT: Well, all right, I don't think there will be any disagreement on that.

MR. LEWIN: It is just as we say, we recognize that the clock is running against us and we are sure that no matter how fast your Honor decides this case, judging by the diversity of views expressed in the courtroom, somebody will take it to the Court of Appeals, and that is going to make it that much later, so—

THE COURT: Well, I don't like to deprive the Court of Appeals of business, I will say that.

MR. LEWIN: So our feeling is that we are going to get it done as soon as possible, and we would hope that if all the other parties in the action are required to file, that they file within three days after our filing, and—

THE COURT: That is understood. We will leave it that way, then. So all sides rest and memoranda will come within the time stated.

The filing of initial memoranda was completed on June 28, 1974. By today—three weeks after the hearing and two weeks after the basic memoranda were filed—there has been no ruling from Judge Bruchhausen on the motion for preliminary injunction or on the plaintiffs' motion for summary judgment which was filed on June 25, 1974.

In an ordinary case, a two-week delay would not, of course, be reason for seeking appellate action. But each day is extremely critical when what is involved is the question whether the 1974 election will take place under the unconstitutional lines drawn by the New York Legislature. Although plaintiffs initially sought relief on the first day for circulation of designating petitions—and were told then by the Corporation Counsel that no one would be harmed if such petitions were circulated under the chal-

lenged lines even if they were subsequently declared invalid—they now find themselves faced with the termination of the petition-circulating process. According to New York Election Law § 149-a(4), the petitions must be filed between July 11 and July 15, 1974. Consequently, unless this Court issues an immediate injunction extending the date for filing designating petitions beyond July 15 for the 56th and 57th Assembly Districts and for the 23rd and 25th Senatorial Districts, the lines drawn for this election will have passed their first stage—*i.e.*, the candidates designated in those unconstitutionally defined districts will be the ones appearing on the ballot for the September 10 primary.

No relief can be obtained, in this regard, from the District Court. As the attached affidavit of David J. Butler (Attachment II) establishes, the District Judge is now on vacation and there is no indication as to when he will return and when a ruling can be expected in this case. Accordingly, the plaintiffs have filed a Notice of Appeal from both the ruling of June 17, 1974, and from Judge Bruchhausen's failure to issue a meaningfully timely ruling on their motion for a preliminary injunction (Attachment III). The purpose of this application is to obtain an order from this Court that will keep this case from being mooted—so far as the 1974 election is concerned—by a continued lack of judicial action in the District Court.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 71-1943

[Caption omitted]

Motion to Dismiss Appeal

PRELIMINARY STATEMENT

This is an action challenging the constitutionality of certain aspects of the legislative reapportionment plan enacted by the State of New York on May 27, 1974. That reapportionment was the result of two years of litigation by the N.A.A.C.P., etc., et al., which culminated on April 1, 1974, with a determination by the Assistant Attorney General of the United States that New York's 1972 district lines had the effect of discriminating on the basis of race, in violation of the federal Voting Rights Act, 42 U.S.C. § 1973 b. See *New York v. United States*, No. 2419-71 (D.D.C.); *N.A.A.C.P. v. New York City Board of Elections*, No. 72 Civ. 1460 (S.D.N.Y.). The Assistant Attorney General's decision had the force of law under the Voting Rights Act, and compelled New York to enact the new lines under attack. Plaintiffs appear to claim either that the 1972 lines were not discriminatory, or that even if they were New York could not constitutionally remedy that discrimination.

In the District Court proceedings the N.A.A.C.P., although unquestionably one of the real parties in interest, was not named as a defendant. The N.A.A.C.P. promptly moved to intervene. The District Court, while not granting that motion, permitted counsel for the N.A.A.C.P. to participate in those proceedings. The N.A.A.C.P. has requested that Judge Bruchhausen formally permit intervention to

assure the right of the N.A.A.C.P. to participate fully in all appellate proceedings. That request is still pending in the District Court.

The Appeal Should Be Dismissed

The complaint in this action was filed on June 11, 1974. On June 17, 1974, plaintiffs unsuccessfully sought a Temporary Restraining Order from the District Court. An evidentiary hearing regarding plaintiffs request for a Preliminary Injunction was held on June 20, 1974. Thereafter plaintiffs moved for summary judgment and the defendants, including the N.A.A.C.P., moved to dismiss the action for failure to state a claim on which relief can be granted. Federal Rules of Civil Procedure, Rule 12(b) (6). On July 12, 1974, without awaiting a decision on their cross motions, plaintiffs appealed to this Court.

The District Court has not formally denied plaintiffs' motion for a preliminary injunction. Nor has it stayed proceedings for a particular period or indefinitely. Compare *Kelley v. Metropolitan County Board of Education*, 436 F.2d 856, 862 (6th Cir. 1970). Plaintiff complains, rather, that the District Court is not acting with sufficient dispatch, and that the resulting delay is equivalent to a denial of the preliminary injunction. Accordingly plaintiff seeks to bypass the District Court and proceed directly to the Court of Appeals.

Whether the District Court has so unjustifiably delayed a decision as to abuse its discretion must depend on the facts of each case. The instant complaint was filed on June 11, 1974. An evidentiary hearing on plaintiffs' request for a preliminary injunction was held on June 20, 1974. Plaintiffs submitted a memorandum in support of the injunction on June 25, 1974, and the defendants and N.A.A.C.P. submitted memoranda on June 28, 1974. Plaintiffs imply that this was the end of the briefing, and that Judge Bruch-

hausen thereafter inexplicably refused to act. Appellants' Motion, p. 5. That is not the case.

On July 1, 1974, plaintiffs filed a second memorandum on the questions before the District Court. Memorandum in Response to Motion to Dismiss of the Attorney General of the United States. Also on July 1, 1974, the Assistant Attorney General of the United States acting pursuant to the Voting Rights Act, approved the 1974 district lines challenged in this action. This decision altered the legal posture of the case, and required further briefing. On July 3, 1974, the state defendants filed a copy of the July 1, decision and supporting memorandum. On July 8, 1974, plaintiffs submitted a third memorandum to the District Court, entitled Supplemental Memorandum for the Plaintiffs. On July 9, 1974, the N.A.A.C.P. also submitted a Supplemental Memorandum dealing with the legal significance of the July 1 decision. Also on July 9, 1974 Judge Bruchhausen's clerk telephoned counsel for the parties to ascertain whether any further memoranda were contemplated. Counsel indicated that no further memoranda would be filed, and that the case was ready for a decision. Three days later on July 12, 1974, plaintiffs appealed from Judge Bruchhausen's "refusal" to act.

These facts clearly do not reveal any abuse of discretion or inordinate delay by the District Court. Certainly the District Court was not obligated to decide in three days the complex issues presented by this litigation. Nor would it have been proper for the District Court to issue a decision before the filing of supplementary memoranda regarding the July 1, 1974 decision of Assistant Attorney General Pottinger. Plaintiffs did not object to the submission of supplementary memoranda, but on two occasions filed such memoranda of its own.

This case would not be more different from *United States v. Lynd*, 301 F. 2d 818 (5th Cir.) cert. denied 371 U.S. 393 (1962). In *Lynd* the complaint had been filed in

July of 1961. After a series of "dilatory motions", the request for a preliminary injunction come on for trial in March of 1962. At the end of the hearing the District Court granted the defendants a 30 day adjournment to prepare their witnesses and file an Answer. Faced with cumulative delays totaling 8 months, the United States appealed, and the Fifth Circuit held the district court's refusal to act constituted a denial of injunctive relief. Similarly in *Kelley v. Metropolitan County Board of Education*, 436 F.2d 856, 862 (6th Cir. 1970), the district court had entered an order formally staying for an indefinite period all proceedings and requests for injunctive relief. The instant case does not involve such inordinate delays.

Section 1292(a), 28 U.S.C. provides that appeals may only be taken to this Court from orders granting or denying preliminary injunctions. Plaintiffs urge that this Court hold that there has been such a "denial" whenever a district court fails to decide a case within 76 hours after the completion of briefing. If such a rule were adopted, this Court would doubtless be flooded with such interlocutory appeals by plaintiffs anxious to bypass proceedings in the district courts. The Courts of Appeals are not *nisi prius* courts; they sit to review the considered decisions of the district courts. Only after such a decision by Judge Bruchhausen are appellate proceedings appropriate.

In the absence of any denial of a preliminary injunction there is no jurisdiction under 28 U.S.C. § 1292(a), and this appeal must be dismissed.

No Injunctive Relief Pending Appeal Should Be Granted

Even if this Court had jurisdiction over this appeal, the injunctive relief sought by plaintiffs on appeal would have to be denied.

Plaintiffs seek two forms of injunctive relief from this Court: (1) an order extending the deadline for circulation

of nominating petitions in certain districts until 2 weeks after a decision by this Court on the merits (2) an order instructing the State to prepare certain alternative districting plans. Neither form of injunctive relief was ever requested from the District Court. Neither plaintiffs' proposed temporary restraining order nor the preliminary injunction requested from the court below asked for either of these forms of relief. Whatever the merits of these proposals, they must first be presented to the United States District Court where, if needed, an appropriate evidentiary record could be developed.

No substantial ground has been even alleged to warrant granting the injunctive relief requested. With regard to the period for circulating nominating petitions candidates have by now completed gathering petitions for the districts as they presently exist. Should redistricting be ordered, the changes plaintiffs seek are so small, involving less than 10% of the population of each district, as not to require reopening the petition process to new candidates. The delay plaintiffs propose would seriously interfere with the operations of the New York City Board of Elections, which must review the petition signatures and prepare ballots in the immediate future. Nor has any need been shown to require the state to prepare alternative districting plans along the lines discussed at the District Court hearing by Mr. Richard Scolaro, Executive Director of the Joint Legislative Committee on Reapportionment. Even if plaintiffs were to prevail on the merits, it is impossible to anticipate at this time the legal standards which the Court might establish for any new plans.

Expedited Briefing and Argument

The N.A.A.C.P., etc., et al., would not oppose an expedited schedule for briefing and argument if necessary to obtain timely and meaningful relief of a decision by the District Court.

In the instant case, however, it is likely that even if the schedule proposed by plaintiffs were adopted and plaintiffs were to prevail on the merits, a new reapportionment could not be fashioned in time for use in the upcoming September 10 primary. All changes in election laws in Brooklyn cannot be put into effect without prior federal approval under the Voting Rights Act, 42 U.S.C. § 1973c. This includes changes in district lines. *United States v. Georgia*, 411 U.S. 526 (1973). Under section 5 of the Voting Rights Act approval may be obtained either from the Attorney General of the United States pursuant to a procedure which normally requires 60 days, or from a special three judge District Court for the District of Columbia. Any attempt to enforce new district lines without the required federal approval would fall within the purview of a three judge federal court already impaneled in the Southern District of New York to enjoin just such violations of the Voting Rights Act. *N.A.A.C.P. v. New York City Board of Elections*, No. 72 Civ. 1460 (S.D.N.Y.).

Finally, we are constrained to clarify the nature of the controversy presented by this case. Plaintiffs suggest that, for some mysterious reason, the State Legislature and the Assistant Attorney General of the United States decided that they wanted more Blacks and fewer whites in public office, and gerrymandered certain legislative districts to accomplish this result. The actual facts are somewhat different. The federal Voting Rights Act forbids the use of district lines which have the effect of discriminating on the basis of race. On April 1, 1974, the Assistant Attorney General of the United States ruled that New York's 1972 district lines in Brooklyn had such a discriminatory effect and this violated the Act. That decision was not appealed from and is final. Thereafter the Legislature enacted new lines which were intended to end this discriminatory effect, and which the Assistant Attorney General ruled on July 1, 1974, had in fact ended that discrimination. The questions

presented by this litigation, are, not whether the Legislature can arbitrarily discriminate against whites, but (1) Whether the decision of April 1, 1974, of the Assistant Attorney General, is reviewable in this action? (2) Whether that decision erroneously concluded that New York's 1972 lines had a discriminatory effect? (3) Whether the Voting Rights Act, insofar as it prohibits district lines with a discriminatory effect, is unconstitutional? and (4) Whether the instant plaintiffs have standing to litigate any of these issues? We submit that none of these questions are substantial, and that plaintiffs complaint clearly failed to state a claim upon which relief could be granted.

Respectfully submitted,

/s/ ERIC SCHNAPPER

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the

(No. 31 7-16-74)
74-1943

At a Stated Term of the United States Court of Appeals,
in and for the Second Circuit, held at the United States
Court House, in the City of New York, on the sixteenth
day of July, one thousand nine hundred and seventy-four.
UNITED JEWISH ORGANIZATION OF WILLIAMSBURGH, INC. et al.,
Plaintiffs-Appellants,

v.

MALCOLM WILSON, et al.,
Defendants-Appellees.

It is hereby ordered that the motion made herein by
counsel for the appellants dated July 12, 1974 for an in-
junction pending appeal and to expedite the hearing of the
appeal be and it hereby is denied without prejudice to
renewal.

A. DANIEL FUSARO
Clerk

By /s/ [Illegible]
Senior Deputy Clerk

* * *

Before: HON. HARRISON L. WINTER,
HON. WILLIAM H. MULLIGAN,
Circuit Judges
HON. JON O. NEWMAN,
District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

No. 74 C 877

[Caption omitted]

July 25, 1974

BRUCHHAUSEN, D. J.

This suit was instituted to declare the recently drawn
redistricted lines of the State Senatorial, State Assembly
and U.S. Congressional Districts in Kings County, pursu-
ant to Chapters 588, 589, 590, 591 and 599 of the New
York Laws of 1974, unconstitutional.

On April 1, 1974, the Attorney General of the United
States through his authorized representative, J. Stanley
Pottinger, contacted the office of the Attorney General of
the State of New York advising him that the Assemblanic,
Senatorial and Congressional district lines in Kings
County established pursuant to the applicable laws of
1972 were invalid under Section 5 of the Voting Rights
Act because it was determined by the Attorney General of
the United States that those lines would produce a racially
discriminatory effect, Exhibit VI annexed to the com-
plaint. That determination precluded the use of those
district lines within Kings County. The Attorney General
of the State of New York concluded to accept that deter-
mination and not to appeal the decision of Mr. Pottinger.
It is alleged in the memorandum of the N.A.A.C.P. and
not controverted that several groups sought to appeal
the ruling of Mr. Pottinger, but met with failure when
their actions were dismissed by the District Court for the
District of Columbia. The New York State Legislature on
May 30, 1974 enacted new lines in an attempt to com-
ply with removing any discriminatory aspects of the
1972 lines, and to comply with the determination of the
Attorney General of the United States. These new lines

were submitted for approval, pursuant to the Voting Rights Act.

It is alleged that the 1974 redistricting laws violate the rights of the plaintiffs in denying them the equal protection of the laws and in depriving them of liberty without due process of law in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and are, consequently, invalid. In short, the plaintiffs, members of the Hasidic community in Williamsburg, object to be divided into separate senatorial and assembly districts by the challenged 1974 State statutes.

The defendants then moved for a dismissal of the complaint for failure to state a claim for which relief can be granted and for lack of jurisdiction.

Subsequent to a full hearing before this Court, on July 1, 1974, Mr. J. Stanley Pottinger, acting on behalf of the Attorney General of the United States, gave approval of the new 1974 lines as not being violative of the Voting Rights Act. See letter addressed to the Attorney General of the State of New York together with a Memorandum and Decision attached to the Supplemental Memorandum for the N.A.A.C.P., appearing as *amicus curiae*.

The position of the plaintiffs is untenable, and the motions of the defendants to dismiss are granted.

In view of the approval of the 1974 lines by the office of the Attorney General of the United States, the cause of action brought pursuant to the Voting Rights Act must be dismissed. In *Allen v. State Board of Elections*, 393 U.S. 544, the Court held in part at page 548:

"In *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), we held the provisions of the Act involved in these cases to be constitutional. These cases merely require us to determine whether the various state

enactments involved are subject to the requirements of the Act."

The Court further held in part at pages 549, 550:

"***Once the State has successfully complied with the § 5 approval requirements, private parties may enjoin the enforcement of the new enactment only in traditional suits attacking its constitutionality; there is no further remedy provided by § 5."

The allegations by the plaintiffs of a violation of their rights pursuant to the Fourteenth and Fifteenth Amendments to the Constitution are also untenable. Jurisdiction is noted pursuant to 28 U.S.C. 1343, and 42 U.S.C.A. 1983.

In *Ince v. Rockerfeller*, 290 F. Supp. 878, the Court held in part at page 883:

"***Pleas for separate community recognition, similar to those raised by plaintiffs here, were made by intervenors from Flatbush and Bay Ridge in contesting the recently enacted congressional districts in New York State. In rejecting their contentions, the three-judge Court in its unanimous opinion in *Wells v. Rockefeller*, 281 F. Supp. 821, 825 (S.D.N.Y. 1968) stated:

"The Legislature cannot be expected to satisfy, by its redistricting action, the personal political ambitions or the district preferences of all of our citizens. For everyone on the wrong side of the line, there may well be his counterpart on the right side. The twenty or more identifiable communities of Brooklyn may well have preserved their own traditions from the days of the Dutch, although in today's rapidly changing world, this is doubtful. But even Brooklyn's large population will not support twenty community congressmen. Of necessity, there must be lines which divide."

It is further well settled that there is no federal constitutional right either to contiguity or compactness of voting districts. *Wood v. Broom*, 287 U.S. 1.

The case at bar is unlike that in *Gomillion v. Lightfoot*, 364 U.S. 339 where the Alabama legislature by alteration excluded all but five of 400 Negro voters from the City of Tuskegee voting rolls. In this case as in the *Ince* case, *supra*, no one is being disenfranchised by the redistricting and no voting right is being extinguished.

It is further well settled that racial considerations have been approved to correct a wrong. The use of a pupil assignment plan, based on race, was upheld in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1.

In *Norwalk Core v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2d Cir., 1968), racial considerations were sustained in promoting integration. See also *Otero v. New York City Housing Authority*, 484 F.2d 1122 (2d Cir., 1973).

In the field of labor, racial quotas requiring preferential hiring were sustained to overcome prior discrimination, *Associated General Contractors of Mass. Inc. v. Altshuler*, 490 F.2d 9, cert. denied U.S. (1974), 42 U.S.L.W. 3594 (1974).

The Court after careful consideration of the record, arguments and applicable law concludes that the plaintiffs' motions for a preliminary injunction and summary judgment be denied. The defendants' motions to dismiss the complaint are granted.

It is so ordered.

Copies hereof are being forwarded to the respective attorneys.

/s/ WALTER BRUCHHAUSEN
Walter Bruchhausen
Senior U.S.D.J.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action 74C 877

[Caption omitted]

Notice of Appeal

Notice is hereby given that the United Jewish Organizations of Williamsburgh, Inc., et al., plaintiffs above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order entered in this action on July 25, 1974, dismissing the plaintiffs' Complaint and denying plaintiff's motion for preliminary injunction.

/s/ NATHAN LEWIN (D.R.)
Nathan Lewin

/s/ DENNIS RAPPS
Dennis Rapps

Attorneys for Plaintiffs

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 1251—September Term, 1973.
(Argued August 16, 1974 Decided August 23, 1974.)
Docket No. 74-2037

UNITED JEWISH ORGANIZATIONS
OF WILLIAMSBURGH, INC., et al.,
Plaintiffs-Appellants,

MALCOLM WILSON, et al.,
Defendants-Appellees,

N.A.A.C.P., et al.,
Intervenors-Appellees.

Before:

OAKES, *Circuit Judge,*
FRANKEL and KELLEHER, *District Judges.**

Appeal from an order of the United States District Court for the Eastern District of New York, Walter Bruchhausen, *Judge*, denying the plaintiffs' motion for a preliminary injunction and dismissing the complaint for failure to state a claim upon which relief could be granted.

Denial of preliminary injunction affirmed; opinion and final determination of the appeal to follow.

* Of the Southern District of New York and the Central District of California, respectively, sitting by designation.

NATHAN LEWIN, Esq., Washington, D.C. (Miller, Cassidy, Larroca & Lewin, Esqs., Dennis Rapps, Esq., Brooklyn, N.Y., of counsel), *for Plaintiffs-Appellants.*

GEORGE D. ZUCKERMAN, Assistant Attorney General (Louis J. Lefkowitz, Attorney General of the State of New York, New York, N.Y., of counsel), *for Defendants-Appellees Wilson, Ghezzi, Anderson and Duryea.*

GERALD W. JONES, Attorney, Department of Justice, Washington, D.C. (David G. Trager, United States Attorney for the Eastern District of New York, J. Stanley Pottinger, Assistant Attorney General, Walter Gorman and S. Michael Seadron, Attorneys, Department of Justice, Washington, D.C., of counsel), *for Defendant-Appellee Sarbe.*

IRWIN L. HERZOG, Assistant Corporation Counsel for the City of New York, New York, N.Y., *for Defendant-Appellee The Board of Elections of the City of New York.*

ERIC SCHNAPPER, Esq., New York, N.Y. (Jack Greenberg, Esq., of counsel), *for Intervenors-Appellees.*

PER CURIAM:

Having studied the papers and heard argument, the court concludes that the District Court's order denying the motion for a preliminary injunction should be, and it is, affirmed. In the interests of the parties and of others who may be affected, this ruling is issued today. An opinion will be filed hereafter discussing this determination and finally disposing of the appeal.

It is so ordered.